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CURRENT TOPICS

Taking Care of the Pennies

THOSE who suggest small economies must tread warily lest they draw upon themselves remarks about feeding chickens and paring cheese. Undaunted, and having recently observed a High Court judge spend a considerable amount of time at assizes solemnly fining three young men £10 each and conditionally discharging a fourth for having unlawful carnal knowledge of girls on the eve of their sixteenth birthdays, we suggest that we could with advantage review the list of crimes for which offenders have to be committed to assizes and not to quarter sessions. There is a wide difference between sexual offences; some are "boy and girl" lapses while others are examples of the lowest depths of degradation to which a human being can sink. It is true that the majority of the cases now reserved to assizes are of a very serious character; if there are to continue to be two grades of court which try cases on indictment the existing division between them is broadly right, but the lists were settled before the present system of having legally qualified chairmen and deputy-chairmen of quarter sessions reached its present stage of development. That the present division is broadly right is no argument for failing to make detailed changes if the opportunity arises. A more radical approach would be to work towards the fusion of assizes and quarter sessions as has been done in effect in Liverpool and Manchester. This would enable cases to be allocated between High Court judges and other judges of the courts in accordance with the seriousness of particular cases rather than in accordance with statute. Some economy could also be effected without detriment to anyone by revising the list of offences which can be tried summarily with the consent of the accused. It is patently absurd that a man who steals hundreds of pounds from his employer's safe can be tried summarily if he agrees whereas a man who breaks and enters into a building by opening a window or door and steals a loaf of bread has to be committed for trial. It is difficult to calculate how many hours are wasted each year in taking depositions in what are comparatively minor charges. One of the most useful legislative changes in recent years has been s. 29 of the Criminal Justice Act, 1948, whereby persons found guilty summarily of crimes for which they could have been tried by a jury can be committed for sentence to quarter sessions. We would like to see an extension of this section coupled with an extension of the jurisdiction of petty sessions. One thing, however, must be preserved whatever changes are made: that is the right of any person charged with a serious crime to claim to be tried by a jury.

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Advice to the Chancellor

THE season is now beginning when the Chancellor of the Exchequer is inundated with unsolicited suggestions about what he should do in his Budget. Among the first in the field is the Institute of Directors, some of whose proposals are of direct interest to solicitors. In spite of the undoubted penury of many of us, there are some who pay sur-tax and there will be many wistful sighs of sympathy with the idea that the starting point of £2,000 a year should be raised. Last year's Budget contained some welcome concessions to sur-tax payers, and while we do not wish to be damping we think it likely that this year the Chancellor will seek his beneficiaries (if any) elsewhere. The institute further suggest that the present period of five years for which determined refugees from estate duty must survive should be abolished and replaced by a graduated scheme. We think that this is a good idea but fear that, as the Chancellor will have little or nothing to give away, he might insist on extending the maximum period from five years to, say, seven in return for some concessions for shorter periods of survival.

New Investment

THE Leicester Permanent Building Society has introduced a new form of deposit which will carry interest at 4 per cent. tax free for a fixed period of three years. It would be wrong to interpret this move solely as a weakening of the solid front which the Building Societies' Association has erected against a rise in interest rates. In general the association's policy has succeeded so far. The majority of investors remain faithful and the waiting which is made necessary by rationing involves little or no hardship. We would rather say that the new proposal introduces a note of variety and stability into building society finance. We shall watch the progress of the experiment closely.

Diminished Responsibility

THE question of diminished responsibility under s. 2 (1) of the Homicide Act, 1957, the Court of Criminal Appeal has held in *R. v. Spriggs* (*The Times*, 15th January), is entirely one for the jury. The grounds of appeal were that the judge had not given sufficient direction as to the meaning of the expression "abnormality of mind" or "mental responsibility" and had not distinguished to the jury between "emotional instability" or "gross personality disorder," and so forth. The words of the subsection had been placed before the jury and they were told by the judge that it was for them to decide whether the appellant was suffering from such abnormality of mind as to impair his mental responsibility. Their lordships, in dismissing the appeal, held that a judge could do no more, and it was not for him, where Parliament had defined a particular state of things, to attempt to redefine or to define a definition. LORD GODDARD said that the conception of diminished responsibility was a novelty in English law and had been borrowed from Scots law. He referred to *Braithwaite's Case* [1945] S.C. 55, from which it could be seen that Scottish judges had difficulty in explaining it to juries. Lord Cooper in that case did not go into nice distinctions between intellect and emotion, and one had to remember after all that juries were not drawn from university professors or university dons. They were ordinary men and women and it would be confusing them to go into metaphysical distinctions between what was emotion and what was intellect.

Radar Speed Tests

AT a cost to the public of some £350 for each set of equipment, the Metropolitan Police have been using radar at selected sites since 20th January to detect motorists who exceed the speed limit. Scotland Yard apparently admit that radar tests can work effectively only if one vehicle approaches at a time, but they assert that it is not their object to trap motorists but to save life. Enthusiasm in that cause can never be excessive, provided that it does not expend itself on completely unprofitable ventures. Apparently the meters are to be set up at an undisclosed number of accident black spots and on roads where vehicles are known regularly to exceed the speed limit. It will be interesting to see whether the police will be able to find any such place where one vehicle is so far behind another that the use of the radar test shows any practical results. Those who are puzzled by the police determination to use the device notwithstanding its unreliability both from the point of view of detection and of proof will reflect that other and better methods of preventing accidents at black spots have already been tried, not without some success.

Lord Kilmuir in Canada

IT is almost a platitude that the common law of this country, like its language, is a bond between the United Kingdom and the countries of the Commonwealth. LORD KILMUIR, in his first Falconer lecture at the University of Toronto, drawing attention to the fact that the common law was carried by the British whenever they entered a territory where there was no system of civilised law in force, also pointed out that it is more widely spread than the blood of the race that created it. It is practised not only in the United States of America, where there is an amalgam of every race in Europe and some others, but also in the courts of Ireland. As far afield as Israel and, further East, in India the debt of other legal systems to the common law is substantial. At a time when so much emphasis is placed in the Press, in Parliament and elsewhere on the things which divide mankind, it is well that a great British lawyer should remind the peoples of the world of the things which unite them.

Care of Mental Defectives

A MEMORANDUM issued by the Ministry of Health on 15th January recommends the admission of patients to mental deficiency hospitals and certified institutions without certification. It also asks hospital authorities to review the patients at present detained in these hospitals and institutions with a view to terminating compulsory powers over those who might suitably remain on an informal basis. The Minister and Board of Control hope that informal admission will now be regarded as normal, except when the patient or his nearest adult relative objects to his admission or in other circumstances in which it is necessary for the hospital to have authority to detain the patient. The proposed change in procedure does not affect the local health authorities' responsibility for the ascertainment of defectives, for providing supervision in the community in all suitable cases and for taking steps to secure patients' admission to hospital when necessary. A patient who in future wishes to leave a mental deficiency hospital will usually be allowed to do so, even against the advice of the doctor, though if it were considered essential in the interests of patient or public to keep him in hospital, he might have to be certified.

NOTES ON AN OCCUPIER'S LIABILITY—I

UNDER the Occupier's Liability Act, 1957 ("the Act"), which came into force on 1st January, 1958, certain changes in the law will be in operation. An outline of the principles has already been given in this Journal (101 SOL. J. 237, 257, 276). It is proposed now to discuss some of the earlier leading cases in the light of the new Act.

Duty under a contract

Prior to the Act it was generally stated that an occupier's liability under a contract was the highest of the various degrees of liability which then existed. It was clear, however, that that was not necessarily so, because in any particular case the extent of the duty might be greater or less than that towards the invitee. Under the Act the position is the same where the plaintiff was a party to the contract, because it is provided by s. 2 (1) that an occupier owes a common duty of care to all his visitors "except in so far as he is free to and does extend, restrict, modify or exclude his duty to any visitor or visitors by agreement or otherwise." The last two words also extend this rule to persons not a party to the contract where the occupier has extended or restricted the duty, e.g., by a notice prominently displayed so that the plaintiff ought to have seen it and been aware of the nature of the notice as one which extends or restricts his rights against the occupier in respect of dangers on the premises.

The occupier's liability (whether under contract or otherwise) is nevertheless limited by the provisions of s. 2 (4), which deal with the question of what is a discharge of the duty of care. Regard must be had to warnings given on the one hand and on the other hand where damage was caused by an independent contractor regard is to be had to the question whether the occupier acted reasonably in entrusting the work to an independent contractor and whether the occupier took such steps as he reasonably ought to satisfy himself that the contractor was competent and the work properly done.

From this we may conclude that the case of *Francis v. Cockrell* (1870), L.R. 5 Q.B. 501, would be differently decided under the Act. In that case *A*, the plaintiff, was a spectator at a steeplechase meeting who paid 5s. for a seat in the grandstand. The stand collapsed, causing him injury. *B*, the occupier of the premises, had had the stands erected by an independent contractor whom he thought to be competent. The claim succeeded as it was held that there was an implied term in the contract in respect of which the 5s. fee was paid that the premises were reasonably fit for the purpose intended and it was no defence to *B* that he had employed a competent contractor. Under the Act, in place of the implied term that the premises are reasonably fit for the purpose, there will be implied the common duty of care. This is expressed (in s. 2 (2)) in the following form: "A duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purpose for which he is invited or permitted by the occupier to be there." This by itself in *Francis v. Cockrell* might not be sufficient to alter the decision, but s. 2 (4), mentioned above, would, because the defendant employed a person whom he reasonably thought was competent. Provided the defendant took steps to satisfy himself that the contractor was competent and the work properly done he would not be liable. All this assumes that

there were no special terms in the contract between *A* and *B* which more specifically laid down the extent of *B*'s liability.

Could the plaintiff in *Francis v. Cockrell* sue the contractor who erected the stand? Clearly the answer is in the affirmative, subject to proving negligence, of course, quite apart from the Act, because the action would be one lying in negligence, purely, and it is doubtful whether the contractor is an "occupier" in the circumstances, notwithstanding that his structure is on the land.

On the other hand, *Hall v. Brooklands Auto-Racing Club* [1933] 1 K.B. 205 would apparently be decided in the same way under the Act as before. In that case a spectator who had bought a ticket to view a motor race was injured when a car left the track and struck an iron railing in front of the plaintiff. It was the first accident of the sort for twenty-six years at that track. An action against the occupiers failed as their duty was not that of insurers but merely to see that the premises were as reasonably free from danger as care and skill could make them. Moreover, the plaintiff knew as much of the possibility of the occurrence as anyone else and he took the risk. By s. 2 (5) of the Act "The common duty of care does not impose on an occupier any obligation to a visitor in respect of risks willingly accepted as his by the visitor . . ."

Maclean v. Segar [1917] 2 K.B. 325 is a decision of McCardie, J., which, under the Act, would, it is conceived, be decided differently. There a fire broke out in an hotel owing to a defective chimney and the defect, it seems, could have been discovered. The judge held that, following *Francis v. Cockrell*, there was an implied warranty that the premises were as safe as reasonable care and skill could make them and that if any person concerned with the construction, alteration, repair or maintenance of the premises could by reasonable skill and care have discovered the defect, then the occupier was liable. It could be concluded from this that an occupier would be liable for the negligence of a predecessor or an independent contractor. This goes too far in the light of the Act.

The common duty of care as expressed above follows the lines of the decisions in *Gillmore v. L.C.C.* (1938), 159 L.T. 615, and *Bell v. Travco Hotels, Ltd.* [1953] 1 Q.B. 473, which would presumably have been decided in the same manner after the Act.

Two other decisions of importance should be mentioned. One is *London Graving Dock Co., Ltd. v. Horton* [1951] A.C. 737, wherein an employee who had complained of the insufficiency of the staging of the scaffolding on which he had to work failed in his action against the occupier of the premises because he knew of the danger and appreciated its significance for his own safety. Section 2 (5), already mentioned, speaks of "risks willingly accepted," which imposes a greater duty on the occupier than that relating to "risks appreciated," and by s. 2 (4) where a warning has been given, the warning is not to be treated, without more, as absolving the occupier from liability, unless in all the circumstances it was enough to enable the visitor to be reasonably safe.

The other case is *Thomson v. Cremin*, a House of Lords decision of 1941, not reported until 1953 (2 All E.R. 1185; [1956] 1 W.L.R. 103n). That laid down that an occupier was liable for the negligence of an independent contractor. The plaintiff suffered injury whilst working in the hold of a ship. Part of the structure of the hold was a loose strut

used in the system of preventing grain carried in bulk from shifting due to the motion of the sea. This strut had not been properly fixed, with the result that during the process of unloading it fell and injured the plaintiff. It had been fixed in position by stevedores in Australia. The plaintiff sued the shipowners here, successfully, they being held liable for the acts of the independent contractors, the stevedores, on the basis that the duty of the shipowner to the plaintiff as a labourer in the ship's hold and as an invitee was a duty to take adequate care, and the shipowner was not exonerated by the

fact of having employed an independent contractor. In similar circumstances to which the Act applies reliance may be placed on s. 2 (4) (b), where those conditions have been satisfied, whereupon the occupier would not be liable.

Both these cases are treated by Winfield under the head of liability in contract, but as we know, in practice, though a servant is owed an implied duty of care by his master under the contract of service, in practice he sues in tort even when suing his master. When suing an occupier he necessarily sues in tort.

L. W. M.

VARIATION OF TRUSTS

OR THE GAME OF CHESS

THE Law Reform Committee's Sixth Report on the court's power to sanction variations of trusts and the introduction of a private member's Bill which secured a second reading in the House of Commons on 6th December, 1957, to give effect to its recommendations once more draws attention to the anomalous state of the law regarding the variation of trusts and the difficulties which many beneficiaries experience, difficulties which the settlor or testator who set up the trust might well have wished to avoid had he foreseen them.

Many trusts now in being were created in the palmier days of the beginning of the century when the aim of the settlement was to preserve the family property intact for the generations to come and under circumstances in which the increase in the rates of estate duty and what is now sur-tax were never contemplated. In many instances the effect of such trusts if allowed to run their full course would be to impoverish the family and perhaps to reduce in two generations an estate originally worth a million pounds to an estate worth a tenth fraction of that sum. In the case of the smaller trusts the keeping in being of the trust in its original form might well cause real hardship where in days of inflation the capital value of the fund, subject to the trust, has greatly decreased and the trust contains a restricted investment clause. A large number of the settlements made in the early part of this century gave life interests to the settlor's daughters with remainders to their children while giving the sons absolute interests. Hardship may arise in the case of a spinster daughter now in receipt of the annual income with no prospect of children yet unable to touch the capital. Additional difficulties will occur where the settlement has given forfeitable life interests or the life interest is a protected one with the possibility of a large and somewhat shadowy class of persons interested in the event of forfeiture. The intention of the settlor, it need hardly be stated, was to advantage the beneficiaries by preserving the property, while under modern circumstances a settlement so framed will have few advantages at least for the remainderman and will fail to preserve the property for the family. Many settlements of the old type are still drafted to-day, so that the problems of varying trusts are not merely temporary ones, although in modern times settlements of a more flexible type are created thus enabling a combination of beneficiaries or the trustees or both to alter or terminate the settlement at some later stage when events make such a course expedient.

Limited jurisdiction of the court

In any trust where all the possible beneficiaries are in existence, *sui juris* and agreed, the variation of the trust will be a possibility and can be effected without the approval

of the court. Where all the possible beneficiaries are not in existence, *sui juris* and agreed, however, there can be no variation of the trusts without the approval of the court, and as the law now stands in many cases the court regards itself as lacking jurisdiction. Prior to the decision of the House of Lords in *Chapman v. Chapman* [1954] A.C. 429 the Chancery judges in many cases sanctioned the rearrangement of trusts, purporting to act under their administrative jurisdiction in chambers. Doubts were, however, held as to the limitations of the jurisdiction and there was no certainty as to what rearrangements would receive judicial sanction and what would not. As these rearrangements were sanctioned in chambers no persons other than those actually concerned in the case could be present in court and it seems that no reports of proceedings in chambers can be made public. Only in rare instances was there any judicial guidance on the court's jurisdiction in these matters, and such cases as there were, for example, *Re New* [1901] 2 Ch. 534 and *Re Tollemache* [1903] 1 Ch. 955, were in the main pre-1926. The litigation resulting in *Chapman v. Chapman* was set in motion when two judges of the Chancery Division refused to sanction rearrangements on the grounds that they did not possess jurisdiction so to do. The *Chapman* trilogy of *Re Downshire*, *Re Blackwell* and *Chapman* was heard together by the Court of Appeal ([1953] Ch. 218); the *Chapman* case was appealed to the House of Lords, though the other two were not. The judgments in both the Court of Appeal and the House of Lords reveal no common view as to the limitations of the court's jurisdiction, but it was clear that the jurisdiction was limited. The problem therefore since 1954 has been to attempt to determine the exact limitations of the court's jurisdiction and then to endeavour to bring the rearrangements of the particular trust within the limited jurisdiction. The courts will still sanction genuine compromises and they still have the statutory jurisdiction under the Settled Land Act, 1925, s. 64, and the Trustee Act, 1925, s. 57, though the jurisdiction under the former section is much wider where there is settled land involved. In addition, the judges of the Chancery Division as the judges in lunacy have jurisdiction to sanction dispositions of a lunatic's property, while they probably can only sanction the variation of a trust in which a lunatic is an interested party if there is a matter of doubt which can be compromised. Following a divorce, too, the trusts of any ante-nuptial or post-nuptial settlement, a term of wide meaning, can still be varied.

It appears therefore that under the law as it now stands, where the settlement is well drawn, it will not be possible in a large number of instances to vary the trusts at all.

Although the presence of infants and lunatics as beneficiaries under trusts is often the reason for the inability to vary or terminate the trusts, the trust may be incapable of variation for such other reasons as the disappearance of one or more beneficiaries, the fact that further beneficiaries may still be born, and the fact that there is an ultimate trust to a body such as the next of kin which cannot crystallise until the death of the person whose next of kin they are. In these and other instances no variation is now possible.

Law Reform Committee's recommendations

The Law Reform Committee, composed of eminent judges and lawyers, regarded this anomalous situation as unjust and unanimously advocated the extension of the Chancery judges' jurisdiction by giving them power to sanction the variation of trusts even where there are persons interested in the property who are not *sui juris* (because they are either infants or lunatics) or are unborn or unascertainable. The possibility of the "undignified game of chess" envisaged by Lord Morton between the Revenue and the taxpayers trooping back to the Chancery Division to get their settlement changed once more following a Finance Act imposing fresh liabilities on the property as formerly held, was not regarded as a serious one by the committee, and they cited the words of Lord Jowitt in the House of Lords (H.L. Official Reports, 5th July, 1949, cols. 899-900) and Sir Hartley Shawcross, Q.C., in the House of Commons (H.C. Official Reports, 7th November, 1949, col. 909) when introducing what later became the Married Women (Restraint upon Anticipation) Act, 1949. The view that found favour with the committee is that once legal tax avoidance (as distinct from criminal evasion) is allowed, then there can be no justification in allowing persons *sui juris* to advantage themselves thereby while prohibiting those who are not *sui juris* from obtaining such advantages. The Chancery judges occupy a somewhat unusual position in the game of chess as they are the judges in lunacy, the judges responsible for dealing with trusts, and the judges who hear the Revenue List.

An additional recommendation made by the committee is that the court should be given power to break Parliamentary entails. Over the last century the Chancery Division has been given by statute powers to deal with settlements where it would otherwise have been necessary to apply for a private Act. The barring of a Parliamentary entail is one of the few remaining cases which still necessitates the expense of the introduction of a Private Bill with all its hazards when the alternative possibility of proceedings in the Chancery Division would be obviously cheaper and more expeditious.

Intention of the settlor

The recommendations of the committee which would give the Chancery Division wide powers to sanction variations of trusts run counter to the cardinal rule of construction of wills and *inter vivos* settlements that the intention of the settlor is paramount and can be deduced only from the actual wording of the document. This rule has been rigorously applied even where it has served, as in the *Diplock* litigation in *Chichester Diocesan Fund and Board of Finance (Inc.) v. Simpson* [1944] A.C. 341, to make nonsense of what the testator had obviously intended, though he had used words not apt to carry out his intentions. However, the intention of the settlor as shown by the words he has used is not followed in every case: statute has intervened in some cases. Amongst these cases the Law of Property Act, 1925, s. 130, has provided that an entailed interest since 1925 can be created only by formal words of limitation. The

Inheritance (Family Provision) Act, 1938, gave the judges of the Chancery Division jurisdiction to vary the trusts of the will and the Married Women (Restraint upon Anticipation) Act, 1949, has varied the effect of settlors' dispositions. The Charitable Trusts (Validation) Act, 1954, has shown a move in the direction of varying the terms of the disposition as deduced by the words used and giving effect to what was obviously the intention of the individual concerned. In the vast majority of cases where the family circumstances are such that the trusts do not work as fully as they might to the general family benefit, the settlor would no doubt be desirous that the trusts should be varied in a manner which would obviate the difficulties experienced—his intention when making the settlement would no doubt be that those he has benefited should be benefited in the most advantageous way. Where the settlor does this by will his wishes cannot, of course, be found out by asking him, as when the trusts are in operation and the difficulties experienced he will no longer be alive. However, in the case of *inter vivos* settlements, unless he has reserved to himself a power of revocation, the settlor though still alive is unable to bring about any variation of the trusts and his wishes are, as the law now stands, not considered at all. This was, for example, the case in *Chapman v. Chapman*.

The Variation of Trusts Bill

Immediately following the publication of the committee's recommendations a private member's Bill entitled the Variation of Trusts Bill, 1957, was introduced and given its second reading in the House of Commons on 6th December, 1957. The Bill in its present form will enable the court to assent to any variation of trusts under which persons who are infants, lunatics, unborn or unascertainable are interested and will, if it becomes law, extend the jurisdiction of the Chancery judges and enable many existing trusts which hitherto the court could not affect to be rearranged greatly to the advantage of the beneficiaries. Clause 2 (2) provides that the court in assenting to a rearrangement of trusts need not consider whether the arrangement is for the benefit of the owners of discretionary interests under protective trusts. The Bill, however, does not give effect to all the recommendations of the committee. The committee's recommendation that the courts be given jurisdiction to break Parliamentary entails and the suggestion that the settlor should be allowed to state his views as a party to any application to vary any *inter vivos* settlement have not as yet been implemented by the Bill, though this was referred to in the House of Commons on the second reading (H.C. Official Reports, 6th December, 1957, col. 810). In addition, the Bill in its present form is somewhat obscurely drafted. Clause 1 (1) (b) of the Bill, for example, adopts an extremely complicated formula for unascertainable or unascertainable persons, and amendments to improve the drafting of the Bill were suggested in the House of Commons on the second reading (H.C. Official Reports, 6th December, 1957, col. 784).

Two main points emerge from the debate on the second reading of the Bill and these were regarded as largely connected—the possibilities of tax avoidance offered by the Bill and whether the traditional forum of Chancery chambers was the right forum for the hearing of cases involving variation of trusts or whether the Chancery judges should hear such cases in open court. The connection between these points appears to be that the publicity of open court would have a deterrent effect on those bringing forward tax avoidance schemes of a somewhat doubtful nature. On balance, it appears from the debate that the Members of the House of

Commons thought that though there would be some tax avoidance the advantages of the Bill outweighed this consideration and that these cases should continue to be heard in Chancery chambers, though a committee could advantageously be appointed to look into this aspect. It will be recollected that the publication of matters dealt with in chambers appears to be contempt of court and punishable. In view of this, it might be to the advantage of legal practitioners that some cases be allowed to be reported, as in this very important branch of trust law there was, at least until the decision of *Chapman v. Chapman*, an almost complete lack of authority. Such cases are heard on appeal in open court and the judge of first instance can adjourn cases into open court, so that there is nothing particularly sacrosanct about the tradition whereby all such cases are heard in Chambers in private. Published reports of judgments alone might provide a satisfactory solution to this problem and it is thought that it is a matter for administrative action by the Lord Chancellor rather than express enactment in the present Bill.

The committee's recommendations were unanimous and in part, at least, based on a claim to justice. The Bill has been

given support by members of both the major parties, and the Solicitor-General on behalf of Her Majesty's Government asked the House of Commons to support the Bill. It appears therefore that the Bill's passage through both Houses will be facilitated, though it is by no means possible to state with certainty whether, or in what form, the Bill will survive its Parliamentary hazards, and trusts may at the moment and almost certainly for several months to come be varied only in the limited way outlined above.

Parliament, assisting in the measured march of equity by the present Bill, will put the jurisdiction of the courts on a firm and intelligible basis. Settlers will be less wary of tying up their property for lengthy periods when they realise that the interests under the settlement may be rearranged at a later date and the new jurisdiction, if conferred, may be used even under modern conditions of heavy taxation in life and on death to preserve settled property intact in the family for generations by rearrangements under the court's authority, much as in pre-1882 days the settlement, disentail and resettlement popular since the time of Sir Orlando Bridgman was utilised.

J. B. M.

Landlord and Tenant Notebook

NEW BUSINESS TENANCY: RENT

IN recent correspondence in *The Times* concerning the working of the Rent Act, 1957, a correspondent had occasion to point out that the value of premises does not depend on the means of the person in occupation. A somewhat, but not completely, similar proposition underlay the landlord's contentions in *Harcwood Hotels, Ltd. v. Harris* [1958] 1 W.L.R. 108; *post*, p. 67 (C.A.), the main issue in which was whether, in determining the rent to be payable under a new tenancy order under Pt. II of the Landlord and Tenant Act, 1954, the county court judge had rightly admitted evidence of trading results previously obtained by the applicants.

The proposal

The premises were an hotel consisting of three houses (out of a row of six) which had been knocked into one and adapted for the purpose. The tenants had carried on business in and with it for some twenty years and had qualified for a new tenancy under the 1954 Act. They had paid £300 a year and asked for a fourteen years' lease at £400, or, if the landlord undertook painting, £450. The landlord counter-offered a seven years' lease at £750. After hearing the evidence of what the applicants had earned in the past five years, and also that of experts, and evidence of offers said to have been made to the same landlord for other premises in the aforesaid row, the judge ordered a seven years' lease at £450 for the first three and £500 for the last four years.

The findings

The judge found, *inter alia*, the following facts (mentioned *passim* in the judgments in the Court of Appeal): (a) the hotel was old-fashioned and difficult to run (no lift) and would not attract people who would pay high rates; (b) during the past five years the business had not been particularly profitable; (c) it was properly run (according to Romer, L.J., "efficiently" run); (d) there had been a fall in the value of money.

Relevance

In my submission, more emphasis might have been laid on (c) than a casual perusal of the judgments suggests was laid, though undoubtedly the finding was mentioned.

Part II of the Landlord and Tenant Act, 1954, is good enough to devote a special section, s. 34, to this matter of rent under a new tenancy. "The rent payable . . . shall be such as may be agreed . . . or as, in default of such agreement, may be determined by the court to be that at which, having regard to the terms of the tenancy (other than those relating to rent), the holding might reasonably be expected to be let in the open market by a willing lessor, there being disregarded (a) any effect on rent of the fact that the tenant has or his predecessors in title have been in occupation of the holding; (b) any goodwill attached to the holding by reason of the carrying on thereat of the business of the tenant . . .; (c) any effect on rent of any improvement carried out by the tenant."

It is, of course, well known that persons engaged in valuing—which entails answering a hypothetical question—often manifest curiosity about the past. Insurers want to know what the claimant paid for the article stolen or destroyed; rating valuation officers send out official forms demanding information about actual rent; arbitrators determining what rent should be properly payable for a farm under s. 8 of the Agricultural Holdings Act, 1948, expect to be told what the existing rent (which, after all, they may have to "increase or decrease") is.

Such facts are not, of course, considered conclusive evidence. It is equally well known that sympathy may play a part in determining a rent: what has also been known to happen is that landlord and tenant have thrown dust in the eyes of authorities by supplying false information about the terms of a letting (*Alexander v. Rayson* [1936] 1 K.B. 169 (C.A.)).

But if what a particular tenant has made out of property is not conclusive evidence of the value of that property, it

can, as the Court of Appeal held, be of use. Evershed, M.R., put it in this way: "If the evidence was led for the purpose of showing that these tenants ought to be granted some concession because of some particular hardship that they had suffered, that might be another matter. . . . But, in my judgment, it is plainly legitimate for a judge to hear evidence which bears on the question which he has to decide, viz.: at what rent would the particular holding reasonably be expected to be let in the open market. Plainly . . . it is legitimate to hear evidence of what similar premises which are being let for a particular purpose (as the one in suit is) can be expected to earn for a potential lessee in the market in the place where the premises are; and, if so, similar evidence is, in my judgment, admissible for proving the same point about the premises in suit."

Sitting tenant

Romer, L.J., exposed the fallacy in a somewhat ingenious line of reasoning proposed on behalf of the landlord, namely, that the county court judge had failed to disregard the effect on rent of the fact that the tenant had been in occupation, etc., as the section expressly directs to be done. "Normally, of course, a man who is in the position of sitting tenant and has built up a business and has been there some years and established himself would be prepared to pay a higher rent than anybody else coming in for the first time. It is against that kind of thing, in my view, to which para. (a) and para. (b) are directed. I cannot find anything in the language of those provisions which renders it irrelevant to look at such materials as the accounts of this company as part of the material on which the judge must make up his mind as to what rent

might reasonably be expected to be obtained for the premises in the open market."

Part of the material

It was later in his judgment that Romer, L.J., mentioned the finding "that this hotel was being run efficiently"; while Evershed, M.R., made the point, also at some distance from the passage I have cited, by quoting from the county court judge's judgment the words: "Accounts could not be of any value unless I were satisfied that the place was properly run" (he went on to say that, as far as he could judge, it was properly run).

This, I suggest, is a vital factor in such cases. To put it shortly, Pt. II of the Landlord and Tenant Act, 1954, does not place a premium upon inefficiency.

Term

The tenants did not cross-appeal against the decision that seven years was the proper term. This topic likewise has a section all to itself, s. 33: "such as may be determined by the court to be reasonable in all the circumstances," and we have so far had very little guidance on how that question ought to be approached. Should, for instance, a tenant who has carried on business on the premises for a long time be granted a longer new tenancy than one who has only been there for a short time? This has not been gone into as yet, though there is authority for the proposition that the landlord's plans for development may justify a shorter-than-otherwise term (*Rehorn v. Barry Corporation* [1956] 1 W.L.R. 845 (C.A.)).

R. B.

HERE AND THERE

BETTER THAN PLANNED

THE Inns of Court and the legal quarter generally always strike me as providing a vivid lesson on the limitations of Planning as it is now conceived. If, with no preconceptions at all, one were to start designing buildings to accommodate the training and the professional life of the lawyers, one might produce something as nobly gracious as the Nash terraces round Regent's Park or as conscientiously angular and overpowering as the London University building behind the British Museum. But it is impossible to imagine that any one person or group of persons, however brilliant or careful, would call out of the void anything which, while fulfilling its essential functions, would satisfy the human spirit at so many levels and in so many ways as the Inns of Court and what remain of the Inns of Chancery. Nothing can produce that effect but the patience to be content to allow a thousand human touches from a thousand different hands to merge and blend within the framework of a living tradition. Just at the moment it is only with difficulty that people can be brought to admit that not by air-conditioning and press-button lifts alone doth man live, but even in this day and decade the Inns of Court hold their own, slightly adapted to the idiom of the time, but not uprooted even by the disasters of war. Barristers' chambers, solicitors' offices, bachelor flats, family flats for members or sometimes for the stranger within the gates combine into a group of communities unique in all the world. Lawyers from beyond the seas, who have once known their charm, remember them with envy.

EVERYONE'S POSSESSION

It has been truly said that a great work of art has a different lesson for different ages because it is itself eternal. So, too, it is because they reflect something which is eternal in the human spirit that the Inns of Court have adapted themselves, generation by generation, to the needs of the men who live and work in them. But the thing goes further than that. A mere college or workshop of lawyers, conceived and planned and executed as a mere college or workshop, would be and remain narrowly and cliquishly a possession of the lawyers, and people would hurry by with as little of interest or second thoughts as when they pass any factory or block of offices functionally fulfilling its own limited purposes. But because the Inns conceive the lawyer, not as a lawyer merely, but as a human being, because they therefore give him great halls emblazoned and hung with pictures for memory and for conviviality, spacious gardens for repose of the spirit and of the eye, chapels for recollection, enclosed courts for quiet, they are in a sense the possession of everyone. For every lawyer connected with them, there must be a thousand strangers for whom they have the quality of a personal possession.

STRANGERS' DELIGHT

I KNOW that, because I was once one of the strangers. I was a little boy and poor, for my father was dead, and I had no thought that I would ever be connected with the law, but for my mother and for me it was a recurring delight to wander through the Inns. We watched the fountain play in Fountain

Court. We read the mottoes on the sun-dials. Greatly daring, we would ring the bell of Middle Temple Hall and the important mustachioed top-hatted porter would let us spend five minutes in its carved and jewelled splendour. We would linger beside the cross-legged effigies of the knights in the Round of the Temple Church. We would peep through the railings into the Inner Temple gardens and think of Lamb's old Benchers, with only the vaguest notion of what a Benchers might be. Lincoln's Inn and Gray's Inn we knew, and one day my mother, with a rather guilty delight, discovered the hidden workings of the catch that opened the gate of the little garden of Staple Inn for a few stolen moments close to the fountain. Then there was Clifford's Inn with its cool, shady cobbled courts, its graceful but dilapidated old houses and its tiny gothic hall. Who takes any intimate or conscious pleasure now in the common-place office block which covers its site? But, thank God, the Inns remain for the most part

and many, many people still enjoy them as ignorantly and happily as my mother and I did long ago. In the daytime children still run through the passages, though none has quite the quality of the one that used to go beneath the Inner Temple Hall before the war. And in the evenings lovers still sit, oblivious of the world, in Fountain Court. The new will blend with the old. The gothic Victorian Middle Temple library, already venerable-seeming at the time of its destruction, has vanished and a fine new building with the first garages in the Temple has taken its place, but it has not vanished without a trace. Its steps remain, leading up to a fragment of terrace ending in mid-air. It lends something of the air of a theatrical set to the space below as if Brutus or Mark Antony might at any moment appear and declaim. But those little architectural quirks are not to be reprobated. They are part of the human tradition of the Inns.

RICHARD ROE

"THE SOLICITORS' JOURNAL," 23rd JANUARY, 1858

ON the 23rd January, 1858, THE SOLICITORS' JOURNAL discussed the transition from the old practice of the Prerogative Court to that of the new Court of Probate: "The Probate Court has been thrown open to the general body of legal practitioners; but there is a very natural hesitation felt by solicitors as to the mode in which they are to take advantage of the change. The practice of the old Prerogative Court is a mystery: its reports are not familiar; its text-books are almost unknown. Every solicitor who begins to reflect on his position with regard to the new court immediately asks himself two practical questions—first, whether he can venture to undertake business for his clients, without sending it through a firm of proctors as his agents; and, secondly, if he undertakes the sole responsibility, what books is he to procure and consult, and what steps he is to take, not

only in cases of difficulty, but in matters of a plain straightforward character. It is obvious that if solicitors could not venture to act for themselves in testamentary business the object of the new statute would be defeated. There would still be a small knot of persons profiting by their traditional knowledge of ecclesiastical practice and there would still be an intermediate agent intruded between the ordinary adviser and the client. But it was only by practical experience that we could be sure that the Act would be so worked as to make it safe for solicitors to rely on themselves. If they can do so they are certain to receive plenty of help from the law publishers. A crop of the new kind of text-books which always spring up to meet the demand caused by a new Act or a new court is already growing round the Probate Court with . . . luxuriance. . . ."

RENT ACT PROBLEMS

Readers are cordially invited to submit their problems, whether on the Rent Act, 1957, or on other subjects to the "Points in Practice" Department, "The Solicitors' Journal," 21 Red Lion Street, London, W.C.1, but the following points should be noted:

1. Questions can only be accepted from registered subscribers who are practising solicitors.
2. Questions should be brief, typewritten *in duplicate*, and should be accompanied by the sender's name and address *on a separate sheet*.
3. If a postal reply is desired, a stamped addressed envelope should be enclosed.

Section 11 (2)—PERIOD OF POSSESSION WITHOUT RENT BEFORE NEW TENANCY AGREEMENT

Q. We act for the landlord of a house, occupied as to the lower part by the landlord, the upper part being let in two flats under old tenancies—i.e., prior to 6th July, 1957. The flats are both assessed at less than £30 net rateable value and the tenancies therefore remain controlled under the Rent Act, 1957. Our client, the landlord, proposes to sell the freehold of the whole premises and it is a condition of the proposed sale that the new owner will be able to obtain vacant possession of the two flats if required. Surprising as it may seem, the two tenants, who are on very friendly terms with the present landlord, have agreed to assist her in

meeting with the proposed purchaser's requirements, and it is proposed that the two tenants should give the present landlord notice to quit the flats. The landlord will then allow the tenants to remain in possession of the flats, without payment of rent, for a period of one week or one month as advised, and they will then after this period enter into new contractual written tenancy agreements with the new landlord or with the present landlord, who under the terms of the proposed sale will be granted a lease for life of the whole premises. Will the proposed arrangements outlined above bring the new tenancies outside the provisions of s. 11 (2) of the Rent Act, 1957?

A. The difficulty, as we see it, lies less in danger to be anticipated from a too liberal interpretation of the expression "immediately" in s. 11 (2) than in eventually establishing that the old tenancies had effectively been determined. That is to say, we agree that, if the notices to quit did terminate those tenancies, the proviso to s. 11 (2) would not operate; but, while the statement made in *Brown v. Draper* [1944] K.B. 309 (limiting modes of determination of statutory tenancies—but equally applicable to protected contractual tenancies—to order of court and actual giving up possession) has been shown to exaggerate the "perdurability" of such tenancies (see *Foster v. Robinson* [1951] 1 K.B. 149 and *Murray, Bull & Co. v. Murray* [1953] 1 Q.B. 211, at p. 217), a tenant can go back on an agreement to surrender (*Barton v. Fincham* [1921] 2 K.B. 291) and the mere fact that he has given notice to quit is not a "ground for possession." We

consider, however, that, if the tenants' willingness to co-operate does not extend to willingness to submit to judgments for possession, reliance could reasonably be placed, in the circumstances, on Sched. I (c) to the Rent, etc., Restrictions (Amendment) Act, 1933, any assertion that the old tenancies still existed being met by a claim or threat of a claim for possession on the ground that they had given notice to quit and that the landlord had, in consequence of those notices, taken steps as a result of which he would be seriously prejudiced if he could not obtain possession.

Section 16—LENGTH OF NOTICE TO QUIT SERVED BEFORE ACT CAME INTO FORCE

Q. On 26th June, 1957, a landlord gives notice to quit to his tenant and such notice to quit expires on 6th July, 1957. The tenancy is a weekly one. The case is subsequently brought before the county court but the judge dismisses the landlord's application, holding that four weeks' notice is required. The Rent Act, 1957, came into force on the 6th July, which is the date the notice to quit expired, and we should appreciate your views as to whether or not on the facts stated four weeks' notice is required, as of course the notice was actually served before the Act came into force.

A. In our opinion, four weeks' notice was not required. The reasoning is as follows: (i) Section 16 says: "... shall be valid unless it is given not less than four weeks before ..." and thus uses "words expressive of futurity" and does not affect vested rights (see *Vaughan Williams, L.J.'s* judgment in *Smithies v. National Association of Operative Plasterers* [1909] 1 K.B. 310, at p. 319). (ii) Though the landlord had no right to possession before the notice to quit expired, his right was vested and not contingent. Once notice was served, determination was "inevitable" (see *Tayleur v. Wildin* (1868), L.R. 3 Ex. 303, and *Davies v. Bristol* [1920] 3 K.B. 428). (iii) The section is not concerned with remedies and *Quilter v. Mapleson* (1882), 9 Q.B.D. 672 (relief made available in cases of forfeiture for failure to insure) is distinguishable accordingly.

Decontrol—COMBINED PREMISES—APPLICATION OF LANDLORD AND TENANT ACT, 1954

Q. A shop and dwelling-house outside London have an assessment of £80 gross and £64 net. Is it correct to say that because the rateable value of the whole property exceeds £30 the whole of the property is decontrolled as regards the Rent Acts (and that no question of apportionment of the net annual value arises between the shop and dwelling-house parts), but that the whole, i.e., both the shop and living accommodation, thereupon become protected under Pt. II of the Landlord and Tenant Act, 1954, and that the landlord cannot therefore get possession of the whole or either part thereof except in accordance with the provisions of the Landlord and Tenant Act, 1954, Pt. II? The tenancy prior to the 1957 Rent Act was a statutory tenancy, but would the position have been altered had it been a contractual tenancy?

A. Provided the shop and dwelling-house form one entity and are not let on separate tenancy agreements they will be treated as a whole and no question of apportioning the rateable value arises. Prior to the Rent Act, 1957, the premises would have been protected by the Rent Acts (see, e.g., *Whiteley v. Wilson* [1953] 1 Q.B. 77), but Pt. II of the Landlord and Tenant Act, 1954, would not have applied (see s. 43 (1) (c) of that Act). By s. 11 (1) of the 1957 Act the premises are now decontrolled and as from the date of decontrol no longer come within the terms of s. 43 (1) (c) of the 1954 Act, and accordingly Pt. II of that Act applies to them. The transitional provisions of Sched. IV to the 1957 Act do not apply (paras. 2 (6) and 11 of Sched. IV). If the tenancy was a statutory one at the date of decontrol by para. 11 of Sched. IV

it is deemed to be a tenancy continuing by virtue of s. 24 of the Act of 1954. The only distinction, therefore, between a statutory and contractual tenancy would be that any notice to terminate in respect of the latter must take into account the contractual terms (s. 25 (3)). We agree that the whole of the premises are now within Pt. II of the 1954 Act. A separate notice to quit cannot be given in respect of either shop or dwelling-house.

Notice of Increase—VALIDITY—TENANT HOLDING OVER

Q. On 16th August, 1947, our client entered into a written agreement for the renting by him of an unfurnished cottage "from the 20th August, 1947, for the term of three years at the yearly rent of £18 4s. payable by equal monthly instalments in advance on the 20th day of each month the first of such payments to be made on the signing hereof." In the said agreement the landlord agreed, on the written request of the tenant made three months before the expiration of the term, to let the premises to the tenant "for a further period of three years from the expiration of the tenancy created by this agreement at the same rent and containing the like covenants and provisos as are herein contained with the exception of the present covenant for renewal the tenant on the execution of such renewed agreement to execute a counterpart thereof." The tenant did not in fact make such a written request or, as we understand it, any request, nor did he enter into any renewal agreement, but he did remain as tenant. The gross value for the purpose of the Rent Act, 1957, is £18. On 18th August, 1957, the landlord served upon the tenant a notice of increase of rent under the Rent Act, 1957. The said notice states that the rent at present being paid is 7s. per week and purports to increase the rent by 6s. 9d. per week as from 20th November, 1957. To suit his own convenience, the tenant has for some years been, and still is, paying his rent quarterly in advance. The tenant wishes to give notice determining his tenancy. Our view is that the tenant held over on the expiry of the original three years as a yearly tenant and therefore must give not less than six months' notice expiring on 20th August next. An opinion has been expressed that the notice should be for four weeks under the new Rent Act. It will be observed that the notice of increase of rent refers to rent by the week, thereby suggesting that it might be a weekly tenancy. The tenant has never thought so. If our view that the tenant is now a yearly tenant is correct, then it would appear that the notice of increase is bad because (a) it should refer to the rent as being £18 4s. per year and the increase referred to at the annual rate, and (b) the increase cannot be charged until after the expiry of six months from 20th August, 1958, being the first date when the tenancy can be determined by either party.

(1) Is it now an annual tenancy? (2) If not, what is it? (3) Must six months' notice, expiring on 20th August, 1958, be given by the tenant? (4) If not, what is the shortest notice which can be given? (5) Is the notice of increase good or bad? (6) If it is bad, what is the earliest date from which increased rent can be charged, assuming that proper notice is given?

A. The holding over by the tenant in the circumstances outlined was, in our opinion, a retaining of possession by virtue of the provisions of the Rent Acts and not a common-law holding over under a new yearly agreement (see *Morrison v. Jacobs* [1945] K.B. 577). Accordingly, s. 15 (1) of the Increase of Rent, etc., Restrictions Act, 1920, applies, and as the original contractual tenancy was for a term of years then a three months' notice is necessary on the part of the tenant to determine the statutory tenancy. No notice is required from the landlord. The landlord's notice of increase must not have effect as respects rental periods beginning before a date not earlier than three months after the service of the notice (s. 2 (2) (a) of the 1957 Act). A rental period means a period in respect of which a payment for rent falls to be made (s. 25 (1)), and as under s. 15 of the 1920 Act

the terms of the original contract, so far as possible, subsist, that would be a month. The fact that the rent has for the convenience of the tenant been paid for several rental periods at a time would not, in our opinion, by itself affect that position. Accordingly, a notice of increase could be served to take effect from a date being the 20th of a month not less than three months after the date of service of the notice. The 20th November, 1957, is such a date. The landlord had, however, inserted the wrong rental period, and the

question is whether that invalidates the notice. The courts have in the past refused to decide that notices are bad on mere technicalities or because there have been trifling errors or obvious clerical mistakes. Unless, therefore, it can be shown that the tenant has been misled by the notice or it contains some substantial error, we do not think that the insertion of a wrong rental period will invalidate the notice, though it will not impose any obligation on the tenant to pay rent other than on the correct gale day.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

Notice of Increase before Apportionment of Gross Value

Sir,—Might I refer to the [Rent Act problem] on "Increase of Rent" in your issue of 4th January?

I agree with the learned writer on his second conclusion that the two-year period of limitation applies to overpayments of rent under the Rent Act, 1957. Might I respectfully suggest, however, that his first conclusion—that notices of increase of rent, served before apportionment of the gross annual value is agreed in writing between landlord and tenant, are valid—is wrong.

My comments on his article are as follows:—

(a) It is true that there is no provision corresponding to that in Sched. IV, para. 2 (3). The following provisions seem to outbalance this consideration:

(i) The rent limit (leaving rates out of account for the moment) is twice the "1956 gross annual value" of the dwelling. But, in the case of a dwelling having no separate gross annual value, the value of the dwelling is an agreed proportion of the value of the whole building (or a proportion decided by the county court in default of agreement): s. 25 (1).

Until the figure is agreed or determined, it is difficult to see how one can even start the calculation. As the apportionment may be agreed in any way that the parties like, the position is radically different from that under the old Acts, where, in theory, the court only found out what had always been the proper apportionment (see Goddard, L.J. (as he then was) in *Field v. Gover* [1944] 2 K.B., at p. 211).

(ii) Parliament appears to accept the rule that errors in the notice itself—e.g., statements as to the amount of the standard rent (*Diprose v. Halford* [1922] E.G.D. 369—a divisional court decision) and as to the amount of the old 15 per cent. increase (*Penfold v. Newman* [1922] 1 K.B. 645)—can invalidate the notice. This follows from the application to the notices of s. 6 (1) of the Rent and Mortgage Interest Restrictions Act, 1923, by Sched. VI, para. 2. The section allows the court to amend a notice and thus validate it where the error would, if not amended, invalidate such a notice. If a misstatement of the standard rent is fatal, so, surely, must be the fact that it is impossible to ascertain.

(b) (i) There appears to be no support for the suggestion that apportionment under the new system applies retrospectively. Under the old Acts, the dwelling generally became controlled from a fixed date (3rd August, 1914, or 1st September, 1939). Immediately there was a letting it had a predetermined rent which could be ascertained by the application of the maxim *id certum est quod certum reddi potest*. (See the quotation by Goddard, L.J., cited above.)

In the new system the apportionment surely acts from the date of the agreement or determination by the court. This seems to be implied by s. 2 (1) of the 1957 Act by which the recoverable rent appears to be determined under the old Acts until increased under the 1957 Act.

Any increase cannot be earlier than three months from the date of service of the proper notice, and may be based on a different apportionment to that applicable under the old Acts. It is thus difficult to see to what the retrospective apportionment could apply, and none is needed, for there is no gap which it can help to fill.

Further, surely the proportion of the 1956 gross annual value is more important than its date.

Kimm v. Cohen (1924), 40 T.L.R. 123, surely would not apply to the Act of 1957. Under the old Acts "the standard rent attaches from the moment when the house is brought under control" (Goddard, L.J., *ibid*). But under the 1957 Act the "new" standard rent is effective simply from the date specified in a valid notice of increase (s. 2 (1)).

(ii) The phrase "*in rem*" is capable of varying widths of meaning.

In *Field v. Gover* (*loc. cit.*) Goddard, L.J., appears to use it in the sense that the standard rent under the old Acts is totally independent of any act of the landlord or tenant as such. ("There always was from 1st September, 1939, a standard rent applicable to the whole house, and there must, accordingly, always have been a standard rent attaching to any room which could be ascertained . . .")

Under the 1957 Act the parties may, subject to an upper limit, themselves fix the standard rent. Further, although valid against landlords purchasing with the particular tenant (or his "successor" under s. 12 (1) (g) of the 1920 Act) as sitting tenant, it will bind no further landlords nor continue beyond that "tenancy" (see s. 11 (2)). In reality it has now become a term of the "tenancy" existing on 6th July, 1957, and nothing more. Thus the phrase "*in rem*," though still applicable, is now much more limited.

(iii) *Austin v. Greengrass* [1944] 1 K.B. 399 surely could not assist the landlord in the case in question. What was "provisional" was the figure for rent given in the notice. Neither such a statement nor the fact that no one had ascertained the rent could make an excessive rent recoverable (*Kimm v. Cohen* and *Field v. Gover*).

DAVID C. E. PRICE

Islington, N.1.

[The proposition we advanced is, as we were careful to point out, arguable; but, while appreciating the force of the observations made, we consider that the following criticisms are in point:—

(a) (i) A dwelling "having no separate gross annual value," being "part only of a hereditament for which a rateable value is then [on the date of ascertainment] shown in the valuation list," has a rateable value on that date and the landlord is given rights which depend on its amount. Pending actual ascertainment of the amount, there appears to be no reason why he should not name a figure, taking his chance.

(ii) The authorities cited were cases in which the notice was misleading or was necessarily incorrect.

(b) (i) This, with respect, seems to beg the question. The Rent Act, 1957, definitely entitles the landlord to a "rent which shall not exceed . . . the 1956 gross value of the dwelling multiplied by two," recognising, and providing for the possibility of, such a dwelling being "part only of a hereditament for which a rateable value is shown in the valuation list" on the "date of ascertainment." The prescribed form recites the right to increase the rent to a sum not exceeding the rent limit. Whether the amount of the gross value has yet to be ascertained, and whether there are two possible ways in which it may be ascertained, does not appear to affect that right.

Kimm v. Cohen is, we consider, applicable in that the rent limit is laid down in s. 1 of the Act, s. 2 dealing with procedure

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for increasing rents: normally, of course, an increase can be made—but see s. 1 (3)!

(ii) The principle stated in *Field v. Gover* in these terms: "once the standard rent has been fixed, the tenant cannot thereafter be made to pay more" appears to operate when rent limit is fixed, no matter how, under the Act of 1957.

(iii) No question of any notice was dealt with in *Austin v. Greengrass*. We cited that case as support for the view that not separately rated dwelling-houses have a rateable value by reference to which their rent limit has to be calculated though it has not yet been "ascertained."—Ed.]

Compensation for Road Injuries

Sir,—I should be very grateful if I might be allowed to reply to Mr. R. S. W. Pollard's comments on my letter on this subject. I should confirm at once that I had not, when I wrote this, read his article in *The Plain View*, but I think this was justifiable. I was, after all, commenting on a report in *THE SOLICITORS' JOURNAL*, which was all that the vast majority of your readers would have read. To go outside it would, I should have thought, be irrelevant.

However this may be, I have now, on Mr. Pollard's suggestion, read the article, and I must say that had I done so before my criticism, so far from being disarmed, would have been stronger than it was. To deal first, however, with the points raised in his letter. I was interested to see that he denies that motorists have a right of way superior to that of pedestrians on the roadway. If this be so, I wish that he would produce some authority for it: he has not done so yet. The Committee of the House of Lords' view that cars might be brought within the principle of *Rylands v. Fletcher* surely has little to do with rights of way. In any case, the committee (as appears from his article) was of the opinion that negligence in a pedestrian should still bar his claim: this, of course, is implicit in the rule in *Rylands v. Fletcher* itself.

Mr. Pollard quotes the view of "another committee" that the "economical losses consequent upon road accidents ought properly to be regarded as a cost of operation of a vehicle in the same way that workmen's compensation used to be . . ." This, again, has little to do with rights of way, and the comparison between driving a car and running a factory seems far-fetched. In any case, workmen's compensation has now been abolished in favour of the presumably better system of State insurance (to which Mr. Pollard is, as is well known, no stranger), and it would seem more, though not completely, fair that road accidents should also be treated thus. Mr. Pollard almost says as much in his article. "Logically," he remarks, as if being logical was rather stupid, "it might be argued that road accidents should be treated in the same way, but this is not the present proposal." Why not, he does not say. This latter committee, incidentally, was, as is also stated in his article, one set up by the Government of Saskatchewan, in Canada, to advise on the law of that province. Its conclusions were accepted by the Government and became law—law, he tells us, which "is unique," at which I, for one, am not disposed to wonder.

I should perhaps make it clear that I am not necessarily opposed to the compensation of injured pedestrians who cannot show negligence in the motorist concerned. What I am opposed to is the idea that motorists should finance the insurance through which this is done. Why motorists? Why not grocers or undertakers (who are all, so far as we know, equally little to

blame) or—and this is a much more sensible suggestion, made first by Mr. Oates in his letter—pedestrians themselves?

With regard to the question which I raised of motorists' insurance premiums, a further point has become apparent on reading Mr. Pollard's article. I quote from it: "It might also be well," he says, "to make a motor driver personally responsible for the first £100 of any damages without limiting the victim's right to compensation from the insurer." From the context, this assertion would definitely seem to apply equally to those cases in which the motorist has not been negligent as to those in which he has. I make no comment, but perhaps some of your readers will supply their own.

I am in any case puzzled to know why Mr. Pollard concentrates in this way upon road accidents. It may be that people should be compensated for all injuries they incur whether because of their own negligence or not (though this might seem to put an undesirable premium on carelessness), but even if this is so I see no reason why it should be confined to injuries incurred on the roads. As Mr. Pollard quite rightly points out, these are tragically numerous, but accidents occurring in the home are more numerous still. By a perfectly fair analogy, may we now expect a suggestion that the builder of a house should be absolutely liable to a man who falls downstairs through not looking where he is going, or that a man who looks for, and finds, a gas leak with a lighted candle should be able to sue the Gas Board for his injuries?

With regard to Mr. Oates's letter in the same issue, I would say that I am most happy to have his support and that I do, indeed, agree with much of what he says. I would question, however, whether his suggestion for determining the liability *inter se* of drivers of vehicles by the weight of the vehicles is, even as a *prima facie* test, altogether fair. Statistics should, as he says, first be consulted.

I should like to comment further on Mr. Pollard's article, but I am doubtful whether I should be justified in doing this.

In conclusion I would say that any attempt to improve the justice and humanity of our law merits nothing but praise. But I cannot believe that Mr. Pollard's suggestion is likely to achieve these ends. An undercurrent runs through the whole article of dislike for the motorist. The last two sentences are no exception to this: "It may be said," he writes, "that the motorist will pay a higher premium if this scheme is adopted. It is likely that he will, but he only pays: it is the road victim who suffers." This, surely, is a most unfortunate instance of playing with words. "The motorist" is contrasted with "the road victim" in such a way as to suggest callousness and fault in "the motorist." It is only when it is realised that "the motorist" here is a man who may never have injured anybody—negligently or not—in his whole life, and that "the road victim" here may be a victim of nothing but his own carelessness, that the unfairness of these remarks, and indeed of the whole scheme, is clearly seen.

R. T. OERTON.

Bideford.

From Desk to Bench

Sir,—Your correspondent, Richard Roe, in this week's *SOLICITORS' JOURNAL* [ante, p. 25] has omitted mention of Mr. Justice Manisty who at one time was a partner in the firm of Pringle Shum & Manisty (afterwards Shum Crossman & Co.) and now—

CROSSMAN, BLOCK & Co.

London, W.C.1.

A lecture on "The Local Government of London" will be given by W. O. Hart, C.M.G., clerk of the London County Council, on 25th February, at University College, Gower Street, London, W.C.1, at 5.30 p.m. Admission will be free, without ticket.

The University College, London, Faculty of Laws, announces the following lectures to be held at the Eugenics Theatre, Gower Street, London, W.C.1, from 5 p.m. to 6 p.m.—30th January: Appeals on Questions of Fact, by D. J. Payne, LL.B.; 6th February: English Criminal Law Reform and the American Model Penal Code, by S. Prevezzer, M.A., LL.M.; 13th February: The Future of

Local Government, by Professor R. C. FitzGerald, LL.B., F.R.S.A.; and 20th February: Legal Aspects of the European Common Market and Free Trade Areas, by F. Parkinson, B.A. Arrangements have been made for the publication of the above lectures, further information of which may be obtained from the College. Admission will be free, without ticket.

At an ordinary general meeting of the Royal Institution of Chartered Surveyors to be held at 5.45 p.m. on Monday, 3rd February, 1958, Mr. Harold Williams, Q.C., will give an address on "Local Government Reorganisation."

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

House of Lords

INCOME TAX: COMPANY PROFITS: WHETHER SALE OF "KNOW HOW" A TAXABLE TRANSACTION **Moriarty (Inspector of Taxes) v. Evans Medical Supplies, Ltd.**

Viscount Simonds, Lord Morton of Henryton, Lord Tucker, Lord Keith of Avonholm and Lord Denning. 4th December, 1957

Appeal from the Court of Appeal ([1957] 1 W.L.R. 288; 101 Sol. J. 147).

A company, Evans Medical Supplies, Ltd., which carried on the business of manufacturing chemists and wholesale druggists, in October, 1953, entered into an agreement with the Government of Burma by which the company agreed to assist the Government in the establishment and operation of a pharmaceutical industry. Under the terms of Pt. I of the agreement the company was to supply technical data and designs for the erection of the factory and the installation of machinery required for the manufacture of the pharmaceutical products. They were also to disclose to the Government the secret processes used by them in the preparation, storage and packaging of the various pharmaceutical products, the products themselves being of known composition. These processes had never been disclosed before to anyone else, and during the seven years' currency of the agreement the company agreed not to disclose them to anyone else in Burma. During the currency of the agreement the company further undertook under Pt. II of the agreement to manage the factory and, whilst training native personnel, to provide the necessary staff meanwhile. The company was permitted to continue its agency in Burma, but that agency would become of less value as the Burmese Government established their own industry. The consideration for the agreement was a lump sum payment of £100,000, together with an annual fee of not less than £25,000 for the obligation to operate and manage the factory during the currency of the agreement. The company appealed against an assessment to income tax under Case I of Schedule D for 1954-55, which included the sum of £100,000, but the commissioners dismissed the appeal. They held that the sum "arose to the company either in the course of the trade which it had hitherto carried on or in the course of a new trade which it commenced to carry on on 20th October, 1953." Upjohn, J., reversed the decision and the Crown appealed. The Court of Appeal discharged his order and remitted the case to the commissioners for apportionment of the £100,000 as between capital receipts and income receipts. The Crown appealed to the House of Lords and the company cross-appealed.

VISCOUNT SIMONDS said that there was no finding of fact that the company commenced to carry on a new trade in October, 1953, in the course of which the £100,000 arose to it. If there had been such a finding the sum could not possibly be included in the company's profits as wholesale druggists for 1953-54. On that ground alone the commissioners' determination could not be sustained. But their fundamental error lay in their misconstruction of the agreement. The £100,000 was solely referable to the promises given by the company in Pt. I of the agreement. The only relevant investigation was as to what the company had to do in order to earn the £100,000 as distinct from what it had to do before it could claim the annual remuneration. This was wholly at variance with the commissioners' view that the whole agreement had to be read together. Even if the two parts had to be read together the agreement could not be regarded as one for the provision of services and nothing else. The commissioners were wrong to treat the consideration which moved from the company under Pt. I as being for services and nothing else. The commissioners held that the company had not sold or assigned any property to the Government. Here they fell into an error which vitiated their determination. A secret process, whether in composition or methods of storing and packing, could be disposed of for value and, by imparting the secret to another, its owner did something which could not fairly be described as rendering a service: *Butterworth v. Page* (1933), 150 L.T. 202; (1935), 153 L.T. 34. The evidence was overwhelming that the company parted with a capital asset and

received for it a capital sum. The company parted with its property for a purchase price. The Crown had contended that even if divulging a secret process to the whole world could be regarded as parting with a capital asset, the same could not be said of divulging it to one other, but that did not make sense. It was doubtful whether, within a measurable time, the secret would have any value at all, at any rate so far as the Burmese market was concerned. The appeal should be dismissed. As to the cross-appeal, there was no specific suggestion below that the sum of £100,000 could or should be split up, part being regarded as a capital and part as an income receipt. If such a suggestion had been made at the outset, evidence could have been directed to the point. The taxpayer should not now be subjected to a further or alternative claim that part of the £100,000 was paid for services. The cross-appeal should be allowed.

LORD MORTON would have dismissed both the appeal and the cross-appeal.

LORD TUCKER agreed with Viscount Simonds.

LORD KEITH would have allowed the appeal and dismissed the cross-appeal.

LORD DENNING was in favour of dismissing the appeal and allowing the cross-appeal. Appeal dismissed, cross-appeal allowed.

APPEARANCES: *Sir Frank Soskice, Q.C., and Alan Orr (Solicitor of Inland Revenue); Senter, Q.C., and Desmond Miller (Whitfield, Byrne & Dean, for Whitley & Co., Liverpool).*

[Reported by F. COWFER, Esq., Barrister-at-Law]

[1 W.L.R. 66]

Court of Appeal

LANDLORD AND TENANT ACT, 1954: RENT PAYABLE FOR TENANCY OF HOTEL: ADMISSIBILITY OF TRADING ACCOUNTS

Harewood Hotels, Ltd. v. Harris

Lord Evershed, M.R., Romer and Ormerod, L.J.J.

9th December, 1957

Appeal from Tunbridge Wells County Court.

At the hearing of an application by the tenants of the Harewood Hotel, London Road, Tunbridge Wells, for the grant of a new tenancy under the provisions of the Landlord and Tenant Act, 1954, the only matters in dispute were the length of the term and the rent which the tenants should pay. The landlord had offered a grant at £750 a year for a term of seven years and the tenants had offered to pay £450 a year for a term of fourteen years if the liability to paint the premises was transferred to the landlord. The evidence before the court included the hotel trading account showing the profits made by the tenants in the preceding five years, two surveyors' opinions of the rent which a willing lessor would accept for the premises in the open market, and, finally, evidence of actual offers received by the landlord for adjoining premises (not in all respects comparable to the hotel). The county court judge found for the landlord on the first issue and ordered a grant for seven years; but directed that the rent payable (on the basis that the landlord should do the painting) should be £450 for the first three years and £500 for the remainder. The landlord appealed, contending that in fixing the rent the judge had wrongly admitted evidence of the trading accounts of the hotel during the previous five years, and further that he had misdirected himself in awarding to the tenants half of their costs.

LORD EVERSLED, M.R., said that the judge had plainly taken account of the evidence as to the profits and to succeed the appellants had to show that he had misdirected himself in admitting that evidence; they could not complain merely at the weight attached to it in an appeal from the county court. His lordship did not accept the contention that s. 34 of the Act of 1954 totally excluded all evidence based on or derived from the tenant's previous occupation of the holding. The premises had to be envisaged as notionally empty, but it was legitimate to hear

evidence of potential earning capacity both of comparable properties and of the holding itself. In his lordship's view the evidence was used by the judge for that purpose and for that limited objective it was admissible. The judge took account also of the other evidence and although his conclusion might be criticised as being too low, that was not open on appeal. Dealing with the question of costs, his lordship distinguished *Le Will v. Brookes* [1956] 1 W.L.R. 1438 and said that the judge had not misdirected himself but had applied the proper test, for he took the view that the tenant's evidence was a far nearer approximation to the right result than the landlord's.

ROMER, L.J., and ORMEROD, L.J., agreed. Appeal dismissed.

APPEARANCES: *M. A. B. King-Hamilton, Q.C.*, *N. E. Wiggins and Aron Owen (Dod, Longstaffe & Fenwick)*; *Dudley Collard (Templer, Thomson & Passmore, Tunbridge Wells)*.

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [1 W.L.R. 108]

BANKING: LETTER OF CREDIT: OBLIGATION OF BANKER

Hamzeh Malass & Sons v. British Imex Industries, Ltd.

Jenkins, Sellers and Pearce, L.JJ. 10th December, 1957

Appeal from Donovan, J.

The plaintiffs, a Jordanian firm, contracted to purchase from the defendants, a British firm, a large quantity of reinforced steel rods, to be delivered in two instalments. Payment was to be effected by the opening in favour of the defendants of two confirmed letters of credit with the Midland Bank, Ltd., in London, one in respect of each instalment. The letters of credit were duly opened and the first was realised by the defendants on the delivery of the first instalment. The plaintiffs complained that that instalment was defective and sought an injunction to bar the defendants from realising the second letter of credit. Donovan, J., refused the application. The plaintiffs appealed.

JENKINS, L.J., said that from the authorities it was plain that the opening of a confirmed letter of credit constituted a bargain between the banker and the vendor of the goods, which imposed on the banker an absolute obligation to pay, irrespective of any dispute there might be between the parties as to whether the goods were up to contract or not. An elaborate commercial system had been built up on the footing that bankers' confirmed credits were of that character, and it would be wrong for this court in the present case to interfere with that established practice. It was true that the court's jurisdiction to grant injunctions was wide, but this was not a case in which the court ought, in the exercise of its discretion, to grant an injunction.

SELLERS and PEARCE, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *Gerald Gardiner, Q.C.*, and *J. Fox-Andrews (Simmons & Simmons)*; *A. A. Mocatta, Q.C.*, and *Mark Littman (Menasse & Tobin)*.

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [2 W.L.R. 100]

DIVORCE: EVIDENCE: TELEPHONE CONVERSATION: ADMISSIBILITY

Corke v. Corke and Cook

Hodson, Morris and Sellers, L.JJ.

14th December, 1957

Appeal from Mr. Commissioner Blanco White, Q.C.

A wife, who had left her husband because of his conduct, and in order to support herself and her children let rooms in her house to lodgers, was charged by her husband with committing adultery with the co-respondent, a male lodger. She immediately, though it was then after midnight, telephoned her doctor requesting him to come at once and examine both her and the co-respondent with a view to establishing their innocence of misconduct. The doctor did not examine them, being of opinion that any negative evidence which he might obtain would be valueless. At the hearing of the husband's petition the trial judge admitted the evidence of the wife, the co-respondent and the doctor as to the telephone conversation, and dismissed the petition. The husband appealed, contending that the judge had misdirected himself in law in admitting evidence of the contents of the telephone conversation.

HODSON, L.J., said that the question was whether the words spoken by the wife to the doctor could be received, because her conduct in ringing up the doctor was of no significance without the words spoken, either given in evidence or inferred from the fact

that she spoke to him at all at that time. At first impression there was much to be said for the view formed by the commissioner; but on consideration that view was incorrect and not supported by authority, which indeed was all the other way. Different considerations might apply where the state of a person's mind was in issue (for example, domicile cases), but those considerations did not apply to this case which involved the straight issue of adultery. This offence could be proved by admissions tending to show that it had been committed, but could not be disproved by statements of the person charged afterwards made to third persons tending to show that it had not been committed. It appeared from the authorities that the rule was justified by the risk of fabrication by a person who might be in a difficulty. In the present case, the respondent sought to support her defence by showing that she was ready to submit to a scientific investigation to show that the charge made against her must be untrue. If she had submitted to an examination, evidence as to her condition would, of course, be relevant and admissible, but the statement that she made to the doctor that she was willing to be examined to this end was of no value. Persons who were unjustly charged would often react in different ways. Some might protest their innocence to all and sundry, others might be so stunned by the allegation that they refrained from so doing or from taking any prompt steps to assert their freedom from guilt. There was no reason why justice required the admissibility of such evidence in favour of an accused person, for the fundamental basis of the rule was that such evidence had no probative value. Since, on the facts found by the commissioner, the conclusion ought to be that adultery was not proved, quite apart from the admissibility of the evidence under discussion, the result should therefore be, not that there should be a new trial, but that the judgment of the commissioner should be affirmed and the appeal dismissed.

MORRIS, L.J. (dissenting on the question of the admissibility of the evidence), said that the essential test as to the admissibility of evidence was the test of relevance. In the present case the issue before the court was whether two people had had sexual intercourse at a particular time. Those who asserted that they had were entitled to put before the court all relevant evidence from which an inference of misconduct could fairly be drawn. Evidence could be given of the conduct of the parties "prior, contemporaneous or subsequent," if it justified an inference of strong mutual attachment. If the test of admissibility was the test of relevance to an issue to be tried, then relevance was to be judged by applying a fair-minded common-sense approach. In the present case, just as all relevant evidence might be given to prove the charges asserted, so all relevant evidence might be given to disprove them. If conduct which suggested guilt might be proved, so might conduct which suggested innocence.

SELLERS, L.J., agreed with Hodson, L.J., that the evidence was inadmissible, but that the evidence adduced by the husband was insufficient to justify a finding of adultery. Appeal dismissed.

APPEARANCES: *H. B. Grant (Haslewood, Hare, Shirley Woolmer & Co., for Mayo & Perkins, Eastbourne)*; *D. E. Peck (Hart, Reader, Rippon, Dodd & Chatfield, Eastbourne)*.

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [2 W.L.R. 110]

COUNTY COURT: DAMAGES: PAYMENT OUT: DISCRETION OF JUDGE

Cross v. Edney

Romer and Ormerod, L.JJ. 17th December, 1957

Appeal from Bridgwater County Court.

In 1943 the plaintiff's husband was killed in an accident and she was awarded the sum of £890 as damages under the Fatal Accidents Acts. The High Court, who tried the case, ordered that sum to be paid into the county court pursuant to the provisions of s. 164 (3) of the County Courts Act, 1934, and it was directed that such sum should be invested and interest at 3½ per cent. per annum should be paid to the plaintiff. The plaintiff, who was 46 years of age, had had some business experience. Her only child was 19 and earning her own living. The plaintiff applied to the county court judge for payment out to herself of the balance of the fund in court, which amounted to £740, to enable her to buy a freehold house which was then subject to a statutory tenancy, or, alternatively, to enable her to invest that sum at a higher rate of interest. The county court judge refused to direct payment out of the moneys to her. The plaintiff appealed.

ROMER, L.J., said that counsel for the plaintiff put his case in two ways. First of all, it was said that, in the particular facts of this case, it was a highly profitable transaction which the judge was asked to authorise, and that the judge went wrong in refusing to approve the purchase which the plaintiff desired to effect. The second way it was put, which was a wider way, was this: that a lady such as the plaintiff, who was middle-aged and had some business experience, and whose only child had almost attained her majority, and who was free, so far as could be known, from the domination of any other person, should be entitled, in the absence of special circumstances, to be paid out the money which stood to her credit or which had been paid, for her benefit, into the county court. So far as the first way of putting the matter was concerned, he (his lordship) thought that (subject to the wider question, which he would consider later) there was no possible ground for interfering with the way in which the county court judge exercised his discretion. The judge was not satisfied that he had sufficient information about this property and about the lessor's and lessee's covenants under the tenancy agreement and other material matters to enable him to say whether this was going to be, or likely to be, a sound investment or merely a hopeful speculation. In those circumstances, it seemed to him (his lordship) impossible for this court to say that the judge erred in refusing to sanction the payment out of this money for the purpose of purchasing this house, bearing in mind, as the judge did bear in mind, that for relevant purposes he was administering this fund in the same way as he would administer it for the benefit of an infant; and that no court would direct an investment of an infant's money in the purchase of a house property without knowing a great deal more about the tenancy to which the property was subject than the county court judge knew in the present case. As to the second contention, he (his lordship) was prepared to assume that there was a right of appeal from the exercise by a county court judge of the discretion vested in him by s. 164; but it seemed to him that it would need a very strong case to justify the Court of Appeal in interfering. Certainly he was by no means disposed to lay down any such general proposition as that for which the plaintiff contended. In his judgment such a proposition would be quite inconsistent with the terms in which s. 164—which took its origin from the Judicature Act, 1925—was expressed, because subs. (3) applied the section to widows generally and not only to widows with infant children; and it obviously was the intention of the legislature that money recovered by a widow, which was ordered to be paid into court, should be administered by the county court for her benefit as distinct from being paid to her for her own use and benefit; and if the court were to say that a lady who was free from outside interference and who had either no children or no infant children, or only children who had practically attained their majority, ought to be entitled as of right to have her money paid out to her, it seemed to him that that in effect would be completely abrogating the discretion which Parliament had vested in the county court judge, and would be going much further than the Court of Appeal had any right to go. He would dismiss the appeal.

ORMEROD, L.J., delivered a concurring judgment. Appeal dismissed.

APPEARANCES: *Roger Gray* (*Gregory, Rowcliffe & Co.*, for *Barrington & Sons, Bridgwater*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] [2 W.L.R. 92]

BANKER: LETTER OF CREDIT: OBLIGATION OF BANKER

British Imex Industries, Ltd. v. Midland Bank, Ltd.

Salmon, J. 20th December, 1957

Action.

An English bank, on receipt of £18 commission, confirmed an irrevocable credit for £23,000 opened by a foreign bank in favour of the plaintiffs and undertook to honour all drafts drawn by the plaintiffs if drawn and presented in accordance with the terms of the credit. Under the credit, the money was payable to the plaintiffs on presentation of sight drafts, accompanied by invoices and "shipped bills of lading" evidencing shipment by a certain date of a quantity of steel bars from any European port to Aqaba, Jordan. Shipment took place from Antwerp within the time prescribed in the credit under bills of lading which incorporated the Hague Rules and which included, among the printed clauses on the back of the bills, a clause (additional clause B) providing that, in the case of iron and steel cargo, the vessel would not be

responsible for correct delivery or for expenses incurred at the port of discharge "consequent upon insufficient securing or marking . . . unless (a) every piece is distinctly and permanently marked with oil paint, (b) every bundle is securely fastened, distinctly and permanently marked with oil paint and metal tagged, so that each piece or bundle can be distinguished at the port of discharge." After shipment, the plaintiffs presented sight drafts for £21,468 to the bank, tendering therewith the documents specified in the letter of credit, but the bank refused to pay them on the ground that there was no acknowledgment on the face of the bills of lading that the terms of additional clause B had been complied with. In an action by the plaintiffs for £21,468 which they alleged to be due and payable under the letter of credit:

SALMON, J., said that the point raised in the case was both novel and important. He accepted the evidence of the plaintiffs' witness, who had great experience in the export and import business, that bills of lading which included a clause similar to clause B were not unusual and were invariably accepted as good without a statement to the effect that the terms of the clause had been complied with. If the bank was right in its present contention it would be necessary for those concerned with the export of iron and steel to revolutionise their present practice when using bills of lading which contained such a clause. In his lordship's judgment where, as in the present case, a letter of credit called for payment to be made against "bills of lading" without qualification and there were no special circumstances it meant "clean" bills of lading: see *per* Bailhache, J., in *National Bank of Egypt v. Hannevig's Bank* (1919), 1 L.L. Rep. 69, with which he entirely agreed. The bills of lading in the present case were plainly "clean" as they contained no endorsement or clausula suggesting that the goods or the packing were defective. The letter of credit did not call for any acknowledgment that the terms of clause B had been complied with, and the bank had no right to insist on such an acknowledgment before payment. He doubted whether it was the duty of the bank (as had been contended) to read the clauses on the back of the bills of lading and to consider their legal effect, or whether the bank was under any greater duty than to satisfy itself that the correct documents were presented and that the bills of lading bore no endorsement to the effect that there was some defect in the goods or their packing. Assuming, however, that the bank was concerned with the clauses on the back of the bills of lading, clause B did not require any acknowledgment that its terms had been complied with. Article IV, r. 2, of the Hague Rules, which compulsorily applied, provided that neither the carrier nor the ship should be responsible for loss or damage arising or resulting from . . . "(n) insufficiency of packing; (o) insufficiency or inadequacy of marks." Counsel for the bank had had to concede that under clause B if the goods were not marked in accordance with its terms the vessel would not be liable for delivery even if they were otherwise adequately marked. On the authorities it was not open to parties to agree that goods should be deemed in certain circumstances to be inadequately marked so as to relieve the vessel from liability if the goods were in fact adequately marked. In so far, therefore, as clause B went beyond paras. (n) and (o) of art. IV, r. 2, of the Hague Rules, it was null and void. The bills of lading need contain no express statement that the terms of clause B had been complied with and the plaintiffs were entitled to succeed, and to judgment for £21,468.

APPEARANCES: *A. A. Mocatta*, Q.C., and *Mark Liltman* (*Ménasse & Tobin*); *Maurice Lyell*, Q.C., and *H. A. P. Fisher* (*Coward, Chance & Co.*).

[Reported by Mrs. E. M. WELLWOOD, Barrister-at-Law] [2 W.L.R. 103]

Chancery Division

**MORTGAGE: RENT RESTRICTION ACTS:
CLAIM FOR PRINCIPAL: INTEREST IN ARREAR:
PROTECTION LOST: WHETHER ON PAYMENT
PROTECTION RESTORED: DWELLING-HOUSE
DIVIDED INTO SIX FLATS: "OTHER LANDS"**
**Coutts & Co. v. Duntroon Investment Corporation, Ltd.,
and Another**

Harman, J. 27th November, 1957

Originating summons.

By a registered charge, dated 9th July, 1947, a dwelling-house divided into six flats was charged with the payment of £10,000

with interest payable at six-monthly intervals. The dwelling-house had originally been a single private house but was divided in or before 1947 into the said six flats, each being separately rated, of which four, by reason of their rateable value, fell outside the protection of the Rent Restriction Acts. In 1956, the mortgagees served notice to apportion the principal moneys between those flats which were and those which were not within the protection of the Acts: £2,206 being the sum apportioned to the protected flats and £7,794 to those unprotected. Arbitration subsequently confirmed the apportionment. Notice was served under s. 12 (5) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, which provides that: "When a mortgage comprises one or more dwelling-houses to which this Act applies and other land . . . the mortgagee may apportion the principal money secured by the mortgage between such dwelling-houses and such other land. . . ." On 12th July, 1957, notice was given calling in the apportioned sum of £7,794, and on the same day the mortgagee issued an originating summons claiming payment of the said £7,794. There was on 9th July, 1957, a payment of interest due on the whole principal sum, and this the mortgagor failed to pay within twenty-one days; it was subsequently paid on 31st July, 1957, and acknowledged as payment on account by the mortgagee, who on the same day gave notice calling in the entire principal sum on the ground that there had been default of twenty-one days in payment of interest, and therefore, the Rent Restriction Acts no longer prevented the enforcement of the mortgage. On 13th September, 1957, the originating summons was amended to claim £10,000, and in the alternative £7,794 with interest in each case.

HARMAN, J., said that the amendment of the originating summons on 13th September was defective since the interest was not on 12th July, when the summons was issued, twenty-one days in arrear, and an amendment could not include a right which was not then in existence, but no objection having been taken and evidence having been filed, the mortgagees must be treated as having issued a fresh summons on 13th September for the full amount. This matter only went to costs. But there were other points taken by the mortgagors. The first point was this: that at the date when the summons was originally issued, namely, 13th September, no interest was due—it had been paid on 1st August. The Act, therefore, if it ever did cease to apply to the mortgagors, had become applicable to them again, and the statute accordingly prevented the enforcement of the mortgage. That argument depended on s. 7 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, which provided that: "It shall not be lawful for any mortgagee under a mortgage to which this Act applies, so long as (a) interest at the rate permitted under this Act is paid and is not more than twenty-one days in arrear . . . to call in his mortgage or to take any steps for . . . enforcing his security or for recovering the principal money thereby secured." The mortgagor contended that it was not true that on 13th September any interest was more than twenty-one days in arrear and the summons, therefore, could not be brought. The mortgagees, however, relied on old authority, the decision of Russell, J., in *Evans v. Horner* [1925] Ch. 177, which was mentioned with approval by the Court of Appeal in *Nichols v. Walters* [1954] 1 W.L.R. 1, where Russell, J., stated that "the section only suspends the rights of the mortgagee during one continuous period," according to certain conditions, "and that when the conditions are broken, his subsequent compliance with them does not revive the protection given by the section." Accordingly, although he felt some sympathy with the Irish decision of *Wallace v. Fogarty* [1926] Ir. R. 255, where a contrary view was taken, he (his lordship) felt bound to hold that the mortgagees were entitled to enforce the whole of their security since, the interest on the principal sum having once been twenty-one days in arrear, the protection of the Rent Restriction Acts was removed and could not thereafter be restored by any subsequent payment of the interest. In these circumstances, it was not necessary to consider the alternative claim which was a claim as originally made to £7,794, but as the case might go further, he felt he must say something about it. This claim turned on s. 12 (5) of the Act of 1920, and in particular on the meaning of the words "other land" to be found in that subsection. In his view, the words "other land" referred to in s. 12 (5) of the Act of 1920 meant property comprised in the mortgage not being dwelling-houses to which the Act applied, so that the mortgagees were entitled to claim payment of £7,794 in respect of the four flats not within the protection of the Rent Acts. Further, in his judgment, the arbitrator was justified in

finding as a fact that four of the flats were outside the protection of the Acts, the first rating assessment having been made in 1947, and that being the correct date for consideration under s. 7 of the Rent and Mortgage Interest Restrictions Act, 1939. Order accordingly.

APPEARANCES: *S. W. Templeman* (Dawson & Co.); *N. C. Tapp* and *D. H. Farquharson* (Charles Ross & Co.).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] [1 W.L.R. 116]

Queen's Bench Division

CONTRACT: MONEY HAD AND RECEIVED: "FUND" IN HANDS OF OR ACCRUING TO DEBTOR

Shamia v. Joory

Barry, J. 6th December, 1957

Action.

The defendant, an Iraqi merchant carrying on business in this country, agreed at the request of Y, his agent in Iraq, to pay £500 to the plaintiff (Y's brother) in this country out of money owed by the defendant to Y as remuneration for services rendered. Y informed the plaintiff of the arrangement and in due course the defendant sent the plaintiff a cheque for £500. Owing to an irregularity the cheque was not met and the plaintiff returned it to the defendant at his request for correction. Notwithstanding the defendant's promise to send the corrected cheque back to the plaintiff, it was never sent and the £500 was never in fact paid to the plaintiff. The plaintiff claimed the £500 from the defendant by way, *inter alia*, of an action for money had or received by the defendant to the plaintiff's use. The defendant, although he admitted his agreement with Y and his promise to pay the money to the plaintiff, denied that there was money due and owing to the plaintiff at the date of the writ.

BARRY, J., said that the law on the subject was correctly stated by Blackburn, J., in *Griffin v. Weatherby* (1868), L.R. 3 Q.B. 753. If a "fund" existed in the defendant's hands at the time when he accepted Y's instructions and made the promise to pay the plaintiff, then the plaintiff had acquired a legal right to recover the money from the defendant, as it was clear from the evidence that Y desired to and did transfer the money to the plaintiff by his instructions to the defendant, which the defendant accepted, and the defendant promised to pay the money to the plaintiff. It made no difference that the plaintiff was not a creditor of Y but the recipient of a gift from him. It had been submitted for the defendant that no debt owing by a third person could constitute a "fund" and therefore could not be subject to the principle enunciated by Blackburn, J., but the word "fund" had not been used by Blackburn, J., as a term of art but as a word which aptly fitted the facts which were under consideration in *Griffin v. Weatherby*. For the doctrine enunciated in that case to apply, it was not necessary for an identifiable sum of money to be entrusted by the transferor to a third party in order that he should hand it over to a transferee. All that the law required was that there should be, in the hands of or accruing to the third person, either a sum of money, or a monetary liability, over which the transferor had a right of disposal. It mattered not from what source the liability arose, and there was no reason why it should not include a debt for money lent or goods sold or services rendered, or a debt of any other kind; or if of a temporary nature, provided it still existed at the date of the transfer and of the debtor's promise to pay the transferee. That interpretation of the law resulted in no injustice to the defendant in the present case. The plaintiff was entitled to recover the £500 from the defendant and his right to do so could not be defeated by any subsequent dealings between the defendant and Y.

APPEARANCES: *Mark Littman* (Teff & Teff); *Peter Boydell* (Kinch & Richardson, for Linder, Myers & Pariser, Manchester).

[Reported by Mrs. E. M. WELLWOOD, Barrister-at-Law] [2 W.L.R. 84]

POULTRY BOUGHT AND RESOLD FOR SLAUGHTER: POULTRY FED: WHETHER "FED" FOR SLAUGHTER

Wernick v. Green

Lord Goddard, C.J., Devlin and Pearson, JJ.

6th December, 1957

Case stated by South Staffordshire stipendiary magistrate.

The defendant was charged that, being a poultry dealer, he failed to keep records as required by art. 3 of the Live Poultry

(Movement Records) Order, 1954. By art. 2 (1) of the order "Poultry dealer" means a person habitually engaged in the business of buying and reselling poultry . . . a person shall not be deemed to be a poultry dealer by reason only that he sells for slaughter poultry which he has purchased and fed for that purpose." The magistrate found that the defendant's business was the buying and reselling of poultry; that he bought poultry already fattened, generally kept them on his premises for one day before selling them for slaughter, and fed them to keep them alive and avoid cruelty. The magistrate also found that "fed for slaughter" as used in the farming industry meant fattened for slaughter, and held that the defendant, having failed to satisfy him that his poultry were "fed for slaughter," did not fall within the exemption and, therefore, should have kept records, and he convicted the defendant.

LORD GODDARD, C.J., said that he did not think that the court were entitled, in a section which created a criminal offence, to say that "fed" necessarily meant fattened. If a man bought birds in order to sell them for slaughter, he would not want them to get thin and so he would feed them, and he would be feeding them for the purposes for which he was keeping them, namely to sell for slaughter. If the Ministry of Agriculture wanted to limit the exemption in some way they would have to make another order; but on the finding that the defendant did feed the poultry, no offence was committed.

DEVLIN, J., agreeing, said that if a bird was given food to prevent it getting thinner he did not see why that was not just as much feeding for slaughter as giving it food to fatten it and increase its weight.

PEARSON, J., agreed. Appeal allowed.

APPEARANCES: *P. C. Northcote (Sharpe, Pritchard & Co., for Woolley & Co., Wolverhampton); B. S. Wingate-Saul (Solicitor, Ministry of Agriculture, Fisheries and Food).*

[Reported by Miss C. J. ELLIS, Barrister-at-Law]

[1 W.L.R. 92]

RATING: RELIEF: SOCIAL WELFARE: ROYAL COLLEGE OF NURSING

Royal College of Nursing v. St. Marylebone Borough Council

Lord Goddard, C.J., Donovan and Havers, JJ.

13th December, 1957

Appeal from County of London Quarter Sessions.

The Royal College of Nursing, an organisation incorporated by Royal Charter, appealed to quarter sessions against the rate imposed by the rating authority in respect of its hall and premises, claiming to be entitled to relief under s. 8 (2) of the Rating and Valuation Act, 1955, as an organisation "not established or conducted for profit and whose main objects are charitable or otherwise concerned with the advancement of . . . education or social welfare" within the meaning of s. 8 (1). Quarter sessions found that its main objects were such as to bring the college within the provisions of s. 8 (1) and allowed the appeal. They

made the following further findings at the request of the Divisional Court to whom the rating authority appealed. (1) That the main objects were those specified in cl. II of its charter, namely, (a) to promote the science and art of nursing and the better education and training of nurses and their efficiency in the profession of nursing, (b) to promote the advance of nursing as a profession in all or any of its branches. (2) That the first object was admitted to be charitable or otherwise concerned with the advancement of social welfare and the second was either charitable or otherwise concerned with the advancement of social welfare, both objects being mutually complementary in that both were directed to a single end, namely, the raising of the standard of nursing for the benefit of the community rather than the promotion of the professional interests of nurses as an end in itself.

DONOVAN, J., delivering the judgment of the court, said that quarter sessions' second finding was ambiguous as it seemed to suggest that the college had really one object, but it could not be read in such a way as to contradict the first finding which was perfectly clear, so that the case had to be considered on the footing that the college had two main objects. If the language used in cl. II (b) was simply "to promote the advance of nursing in all or any of its branches" its object would be admittedly charitable, as that would be a purpose beneficial to the community. It was the addition of the words "as a profession" which raised the difficulty. The question to be answered was: Was the second main object of the college the advancement of nursing or the advancement of the interests of nurses? That was purely a question of construction of the language used. The "advance" of some particular calling or profession meant, presumably, that the profession had greatly increased in stature, importance, membership and general esteem. A profession could be advanced in that sense by service—improvement in the quality and range of services rendered would certainly have that effect. If one found an organisation, one of whose objects was "to advance nursing as a profession," there was no great difficulty in interpreting that as meaning to improve the quality and range of the services which nurses gave and so to enhance the stature and importance of the nursing profession and the esteem in which it was held. Improvements in pay and conditions (which might well follow) would be means not ends. The court had come to the conclusion that upon its true construction cl. II (b) was directed to the advance of nursing and not to the advance of the professional interests of nurses. The second main object of the college was therefore charitable. If that were right, there was no conflict between the decision and the recent decision of the Court of Appeal in *General Nursing Council for England and Wales v. St. Marylebone Borough Council* [1957] 3 W.L.R. 1039, where on different facts it was held that the professional benefit of nurses was a main object of the council. It was not so in the present case. Appeal dismissed. Leave to appeal.

APPEARANCES: *J. P. Widgery (Sharpe, Pritchard & Co.); Michael Rowe, Q.C., and Eric Blain (Charles Russell & Co.).*

[Reported by Mrs. E. M. WELLWOOD, Barrister-at-Law]

[1 W.L.R. 95]

BOOKS RECEIVED

The Law Relating to Building and Engineering Contracts.

By the late W. T. CRESWELL, K.C., with a Foreword by the late ALEXANDER MACMORRAN, M.A., K.C. Sixth Edition. By D. R. PERREY, B.A. (Hons.) (Oxon), Solicitor. pp. xxiv and (with Index) 444. 1958. London: Sir Isaac Pitman & Sons, Ltd. £1 10s. net.

An Englishman Looks at the Torrens System.

By THEODORE B. F. RUOFF, Solicitor of the Supreme Court. pp. ix and (with Index) 106. 1957. Australia: The Law Book Co. of Australasia Pty., Ltd. £1 5s. net.

"Current Law" Income Tax Acts Service [CLITAS].

Release 41: 17th December, 1957. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. Edinburgh: W. Green & Son, Ltd.

"Current Law" Income Tax Acts Service [CLITAS].

Release 42: 18th December, 1957. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. Edinburgh: W. Green & Son, Ltd.

The Solicitors' Clerks' Handbook. By J. GORMLEY, LL.B., and R. BARKER, B.A. pp. vii and (with Index) 199. 1957. London: Sweet & Maxwell, Ltd. £1 1s. net.

The Law of Auctioneers' and Estate Agents' Commission.

Second Edition. By DAVID NAPLEY, Solicitor of the Supreme Court. pp. xxxii and (with Index) 290. 1957. London: The Estates Gazette, Ltd. £2 2s. net.

Income Tax Principles.

Third Edition. By H. A. R. J. WILSON, F.C.A., F.S.A.A., and K. S. CARMICHAEL, A.C.A. pp. ix and (with Index) 180. 1958. London: H. F. L. (Publishers), Ltd. 12s. 6d. net.

Origins of Ownership.

By D. R. DENMAN. pp. (with Index) 190. 1958. London: George Allen & Unwin, Ltd. £1 2s. 6d. net.

Protection from Power under English Law.

The Hamlyn Lectures. Ninth Series. By LORD MACDERMOTT, Lord Chief Justice of Northern Ireland. pp. viii and 196. 1957. London: Stevens & Sons, Ltd. 16s. 6d. net.

REVIEWS

Jurisprudence. By R. W. M. DIAS, M.A., LL.B. (Cantab.), of the Inner Temple, Barrister-at-Law, and G. B. J. HUGHES, M.A. (Cantab.), LL.B. (Wales). 1957. London: Butterworth and Co. (Publishers), Ltd. £2 2s. net.

This work is intended to replace Mr. Hughes' book on Jurisprudence which appeared in 1955. A key to its approach is to be found in the dedication—"to the authors of *The Meaning of Meaning*." A highly critical view of language and the cultivation of an instinct for distinguishing between the significance and the associations of words are undoubtedly disciplines beneficial to the law student, and the authors are at pains to inculcate salutary habits of thought in such matters. They claim in the preface to emphasise inductive rather than deductive methods so as to promote constructive thinking. Certainly jurisprudence is the most promising of the academic law subjects for this purpose, and so long as the student, perhaps without at that stage sufficient knowledge of practical law, is not merely thrust into a welter of conflicting theories and philosophies and left to choose for himself, the aim is worthwhile. We hasten to add that in this book the thorough analysis of traditional and modern views does give the student a good deal of guidance in the process of discrimination and the formation of ideas.

Another danger, it has always seemed to us, to be avoided in the study of jurisprudence is that the student will come away from the course with the notion that he can later on reason out his law by the same mental processes as he has been taught to bring to bear in his researches into abstract legal science. There is surely nothing more perilous than to imagine that the court's answer to a problem may be forecast by logical reasoning alone, even when the would-be prophet is aware of the guiding authorities. The practical lawyer therefore looks, in such books as this, for some restraint in the criticism, particularly of modern cases, anxious as he is lest the student should too readily assume that faulty logic necessarily makes bad law. That the present authors give no cause for alarm in this respect may be freely admitted; indeed, their evaluation in the chapter on Sources of Law of the place of academic lawyers in the scheme of things seems to us to put the problem in just the right perspective.

An admirably planned and most thoughtful treatise for the student not afraid to work things out for himself.

A Difference in Death. By DON RUSSELL. 1957. London: Faber & Faber, Ltd. 12s. 6d. net.

He is a particularly hopeful writer who attempts to introduce genuine novelty into the well trodden field of fictitious crime detection, but the author here has succeeded. He has found a fresh method in this murder mystery unfolded in the course of an Old Bailey trial and told from the point of view of the presiding judge, a device hitherto unexploited. What gives this book its special character is the skill with which the relationships between

judges, counsel and their clerks are portrayed. The complete accuracy of the professional picture stamps it as the work of a man intimately connected with the practice of the law. The writing is of very high quality, and if the story itself is less ingeniously complex than many of its kind, the special qualities of this book give it permanent value in the realm of legal fiction.

Nationality and Citizenship Law of the Commonwealth and of the Republic of Ireland. By CLIVE PARRY, M.A., LL.B., Barrister-at-Law, Fellow of Downing College, Cambridge. London: Stevens & Sons, Ltd. £6 6s. net.

Time was when British subjecthood was a comparatively simple concept, and no lawyer doubted the rôle of British nationality in the determination of rights and obligations under English law. A comparatively few pages of the fifth edition of Dicey's *Conflict of Laws* sufficed to set out, by rule and illustration, everything required for a grasp of the matter. As the author of this work shows, the "Imperial" system so encoded was of no great antiquity, having evolved from colonial expansion and regnal union. And long before the Act of 1948 the system was becoming inadequate for a Commonwealth of independent States. One result of the consequent new trend of decentralisation has been to make the network of nationality laws which replaces the Imperial system so complicated as to call forth this thousand-page treatise for its exposition and discussion.

The book replaces, much enlarged in scope as well as size, the volume on British nationality which appeared under the same author's name in 1951 as a pendant to the sixth edition of Dicey. For the larger work Dicey's method of numbered rules has wisely been abandoned. It would have led to confusion with statutory texts, and besides, Mr. Parry's genius is more for suggestive comment than for categorical assertion. In separate sections for the United Kingdom and Colonies and for each of the principal members of the Commonwealth, the old and new law are dealt with in detail, to each section being appended an annotated text of the relevant statutes. The annotations include many illustrations based on practical hypotheses where no relevant decision is available. Every page of the text, no less than the long list of acknowledgments, testifies to the mountain of patient research that has gone into this comprehensive study.

Before embarking on the separate sections, the author has discussed, in a hundred and forty of his most interesting pages, the history and background of the whole subject in its national and international aspects. Here the intricacies of plurality and statelessness, as well as the legal nature of nationality, are among matters which are explained to the reader before he turns to the specific bodies of rules affecting particular parts of the Commonwealth, or, as the case may be, the Republic of Ireland, to which (with India second) belongs the distinction of having the most up-to-date citizenship statutes here reproduced.

IN WESTMINSTER AND WHITEHALL

STATUTORY INSTRUMENTS

Acute Rheumatism (Amendment) Regulations, 1958. (S.I. 1958 No. 17.) 4d.

East Suffolk and Norfolk River Board (Alteration of Boundaries of the River Deben (Upper) Internal Drainage District) Order, 1957. (S.I. 1957 No. 2250.) 5d.

Housing (Forms) (Scotland) Amendment Regulations, 1958. (S.I. 1958 No. 30 (S.I.)) 1s.

Import Duties (Drawback) (No. 1) Order, 1958. (S.I. 1958 No. 16.) 4d.

National Assistance (Charges for Accommodation) (Amendment) Regulations, 1958. (S.I. 1958 No. 42.) 5d.

Police Pensions Regulations, 1958. (S.I. 1958 No. 48.) 6d.

Retention of Cables Under and Over Highways (County of Cambridge) (No. 1) Order, 1958. (S.I. 1958 No. 19.) 5d.

Small Ground Vermin Traps Order, 1958. (S.I. 1958 No. 24.) 4d.

Stopping up of Highways (County of Buckingham) (No. 1) Order, 1958. (S.I. 1958 No. 18.) 5d.

Stopping up of Highways (County of Durham) (No. 2) Order, 1958. (S.I. 1958 No. 9.) 5d.

Stopping up of Highways (County of Essex) (No. 1) Order, 1958. (S.I. 1958 No. 20.) 5d.

Stopping up of Highways (County of Essex) (No. 2) Order, 1958. (S.I. 1958 No. 21.) 5d.

Stopping up of Highways (County of Kent) (No. 1) Order, 1958. (S.I. 1958 No. 10.) 5d.

Stopping up of Highways (City and County Borough of Sheffield) (No. 1) Order, 1958. (S.I. 1958 No. 22.) 5d.

Stopping up of Highways (City and County Borough of Sheffield) (No. 2) Order, 1958. (S.I. 1958 No. 23.) 5d.

Stopping up of Highways (County of Southampton) (No. 1) Order, 1958. (S.I. 1958 No. 6.) 5d.

Stopping up of Highways (County of Southampton) (No. 2) Order, 1958. (S.I. 1958 No. 7.) 5d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, London, W.C.1. Prices stated are inclusive of postage.]

NOTES AND NEWS

Honours and Appointments

Dr. D. A. URQUHART has been appointed deputy coroner for Shrewsbury in succession to Mr. Eric Elton Morgan, who has resigned owing to heavy pressure of work.

The following promotions and appointments are announced in the Colonial Legal Service: Mr. V. I. DEL. CARRINGTON, Police Magistrate, Barbados, to be Registrar, Barbados; Mr. H. W. F. HARRIS, Clerk of the Courts, Jamaica, to be Resident Magistrate, Jamaica; Mr. D. C. KENNEDY, Crown Counsel, Kenya, to be Senior Resident Magistrate, Kenya; Mr. R. H. MILLS-OWENS, Magistrate, Hong Kong, to be District Judge, Hong Kong; Mr. J. B. PINE, Attorney-General, Bermuda, to be Solicitor-General, Nyasaland; and Mr. M. J. R. CROAKLEY to be Deputy Registrar of the High Court, Tanganyika.

Personal Note

Judge T. W. Langman was last week presented with an inscribed silver rose bowl by the Lord Lieutenant of Herefordshire to mark his retirement as a county court judge.

Miscellaneous

REGISTRATION OF RESTRICTIVE TRADING AGREEMENTS

Parliament has approved the second and final Order* made under ss. 9 and 10 of the Restrictive Trade Practices Act, 1956, calling up for registration all agreements not covered by the first Order. The agreements now made subject to registration are those in which the only relevant restrictions relate to—

- (a) the quantities or descriptions of goods to be produced, supplied or acquired; or
- (b) the processes of manufacture to be applied to any goods or the quantities or descriptions of goods to which any such process is to be applied; or
- (c) the areas or places in or from which goods are to be supplied or acquired, or any process of manufacture supplied.

The Order was made on 29th October, 1957, came into force on 31st December, 1957, and provides for a "prescribed period" of three months. Accordingly as regards agreements covered by the second Order:—

(1) There is *no* obligation to submit particulars of any agreements terminated before 31st December, 1957, or of agreements terminated before 31st March, 1958, which were in existence before 29th October, 1957.

(2) Particulars of agreements in existence before 29th October, 1957, and varied between 31st December, 1957, and 31st March, 1958, so as to become unregistrable should be sent to the Registrar, but will not be registered.

(3) In the case of agreements in existence before 29th October, 1957, which are varied before 31st March, 1958, but remain registrable, particulars of the agreement *as varied* should be submitted.

(4) In the case of all other agreements particulars should be submitted by 31st March or within three months of their being made. Particulars of variations and terminations made *after* 31st December, 1957, should be submitted within three months of the change.

Very broadly, the effect of the timetable above is that parties who wish to abandon an agreement rather than have it registered must abandon it before 31st March; and parties who wish to alter their agreement and to ensure that it is registered in the altered form must alter it before 31st March.

By the Registration of Restrictive Trading Agreements Regulations, 1956,† four copies (one signed) of all relevant documents are required for registration together with a certificate

on the appropriate form. A "Guide to the Registration of Agreements under Pt. I of the Restrictive Trade Practices Act, 1956,"‡ has been prepared for the assistance of those who are required to furnish particulars (the dates on pp. 14 and 15 of the guide refer to the first Order) and the forms of certificates (which are the same as those used for registration under the first Order) may be obtained from the Registrar's offices in London and Edinburgh, and the Keeper of the Register in Belfast; all offices of the Federation of British Industries and branch offices of the National Union of Manufacturers; and from all Chambers of Commerce affiliated to the Association of British Chambers of Commerce.

Particulars for registration should be sent to the London office, addressed as follows:—

The Office of the Registrar of Restrictive Trading Agreements,
(Branch R), Chancery House, Chancery Lane, London, W.C.2.
17th January, 1958.

Office of the Registrar of Restrictive Trading Agreements,
Chancery House,
Chancery Lane,
London, W.C.2.

‡ Guide to the Registration of Agreements under Pt. I of the Restrictive Trade Practices Act, 1956. Price 1s., by post 1s. 2d.

These publications and copies of the Restrictive Trade Practices Act, 1956, price 1s. 6d., by post 1s. 8d., are obtainable from H.M. Stationery Office, or any bookseller (but NOT from the Registrar's offices).

LAW SOCIETY: HONOURS EXAMINATION

The following candidates were successful in The Law Society's Honours Examination held in November, 1957:—

FIRST CLASS

(In order of merit)

(1) G. Boyle, M.A. (Cantab.); (2) M. Rabinovitch, LL.M. (Manchester).

SECOND CLASS

(in alphabetical order)

D. O. Bates; R. G. Beecroft, LL.B. (Liverpool); R. M. Bradley-Reynolds; N. P. Dingley, B.A. (Oxon); J. M. Feather, LL.B. (Leeds); F. J. Fishburn, B.A. (Oxon); J. O. Holroyd-Doveton; R. D. Hudson, B.A., LL.B. (Cantab.); D. J. Lesser; R. Lowe, LL.B. (London); T. M. McCabe; J. A. Morgan, LL.B. (Liverpool); N. H. Oldham, LL.B. (Manchester); R. L. Payton, LL.B. (London); W. M. P. Raeside, B.A. (Cantab.); H. W. D. Sculthorpe, M.A., LL.B. (Cantab.); G. A. Slater, LL.B. (Liverpool); S. B. Solts; J. C. M. Starling; J. A. E. Young, LL.B. (London).

THIRD CLASS

(in alphabetical order)

D. N. Blackman, LL.B. (London); C. S. Cockcroft; D. Cohen; M. F. Coker; J. M. H. Cotterill; J. V. Du Buisson, B.A. (Oxon); P. Fallon; A. S. Foster; A. D. Heelis; A. D. Hewat, B.A. (Cantab.); M. J. Larkam; J. M. B. Law, B.A. (Oxon); J. N. Marsham, LL.B. (Liverpool); R. H. Midgley, B.A. (Oxon); P. R. Moody, LL.B. (London); P. C. Moore, LL.B. (Bristol); C. B. Morson; A. T. Mortlock, B.A. (Oxon); P. Noble; L. J. Orton; T. H. R. Poole; W. H. S. Relton, B.A. (Oxon); S. Robinson, LL.B. (Manchester); K. M. Round, LL.B. (Sheffield); M. Simkins; P. B. Stanbury; B. A. J. Statham; J. T. C. Taylor, B.A. (Oxon); J. E. Walters; R. V. Webb; K. R. White, LL.B. (Sheffield); and P. Williams.

The Council of The Law Society have accordingly given Class Certificates and awarded the following prizes:—

To Mr. Boyle—The Clement's Inn Prize—Value £48.

To Mr. Rabinovitch—The Daniel Reardon Prize—Value £24.

The Council have given Class Certificates to the candidates in the Second and Third Classes.

One hundred and twenty-eight candidates gave notice for Examination.

* The Registration of Restrictive Trading Agreements Order, 1957—S.I. 1957 No. 2158. Price 3d., by post 5d.

† The Registration of Restrictive Trading Agreements Regulations, 1956—S.I. 1956 No. 1654. Price 4d., by post 6d.

RENT TRIBUNAL AMALGAMATIONS

With effect from 1st April, 1958, the existing Rent Tribunals at Coventry will be closed and amalgamated with the Birmingham East and Birmingham West Tribunals. The office of the new tribunal will be at the G.W.R. Buildings, 6 Livery Street, Birmingham, 3; telephone numbers Birmingham Central 3060 and 3069.

DEVELOPMENT PLANS

COUNTY OF MIDDLESEX DEVELOPMENT PLAN

Proposals for alterations or additions to the above development plan were on 13th January, 1958, submitted to the Minister of Housing and Local Government. The proposals relate to land situate at the rear of Hanger Lane and Queen's Drive within the Borough of Ealing, in the County of Middlesex. Certified copies of the proposals as submitted have been deposited for public inspection at the Town Hall, Ealing, W.5, and also in the County Planning Department, 10 Great George Street, Westminster, S.W.1. The copies of the proposals so deposited, together with copies or relevant extracts of the plan, are available for inspection free of charge by all persons interested at the places mentioned above between the hours of 10 a.m. and 4.30 p.m. on Mondays to Fridays and 9.30 a.m. and 12 noon on Saturdays (except in the case of the copy deposited in the County Planning Department which will not be open for inspection on Saturdays). Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 8th March, 1958, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Clerk of the Middlesex County Council, Guildhall, Westminster, S.W.1, and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

COUNTY COUNCIL OF THE COUNTY OF SOUTHAMPTON
HAMPSHIRE DEVELOPMENT PLAN

Proposals for alterations or additions to the above development plan were, on 7th January, 1958, submitted to the Minister of Housing and Local Government. The proposals relate to land situate to the east of Harts Farm, Brockhampton, within the Urban District of Havant and Waterloo, in the County of Southampton. Certified copies of the proposals as submitted have been deposited for public inspection at the following places: the office of the County Planning Officer, Litton Lodge, Clifton Road, Winchester; the office of the Clerk of the Havant and Waterloo Urban District Council, Town Hall, Havant, and the office of the South-East Area Planning Officer, 20 High Street, Fareham. The copies of the proposals so deposited, together with copies or relevant extracts of the plan, are available for inspection free of charge by all persons interested at the places mentioned above between the hours of 9 a.m. and 5 p.m. on Mondays to Fridays. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 28th February, 1958, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Southampton (Hampshire) County Council, The Castle, Winchester, and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

Wills and Bequests

Mr. George Hatt-Cook, solicitor, of Hoole, Chester, left £58,099 (£57,880 net).

Mr. F. Greenwood Howarth, solicitor, of Blackburn, left £16,540.

Brigadier Sir Arthur Maxwell Ramsden, solicitor, of Leeds, left £9,943 (£6,498 net).

OBITUARY

MR. A. J. ADAMS

Mr. Alfred John Adams, O.B.E., solicitor, of Hemel Hempstead, Herts, died on 26th December, aged 81. He was admitted in 1898.

MR. F. R. ALLEN

Mr. Frederick Richard Allen, solicitor, of Clement's Inn, Strand, London, W.C.2, died on 10th January. He was admitted in 1919.

MR. T. C. DOMMETT

Mr. Thomas Charles Dommert, solicitor, of Weston-super-Mare, died on 3rd January, aged 69. He was admitted in 1925.

MR. G. G. H. GURNEY

Mr. Gregory Goldsworthy Henry Gurney, retired solicitor, of Bude, Cornwall, died on 12th January, aged 90.

MR. G. G. KERSHAW

Mr. Geoffrey Goodier Kershaw, M.C., solicitor, of Manchester, died on 5th January, aged 70. He was admitted in 1911.

MR. G. D. POOL

Mr. George Douglas Pool, solicitor, of Newcastle upon Tyne, died on 12th January, aged 48. He was admitted in 1931.

SOCIETIES

At the annual general meeting of the SOLICITORS' ARTICLED CLERKS' SOCIETY the following officers were elected: president, Mr. Antony Cowen; vice-president, Miss Diana Courtney; honorary assistant treasurer, Miss Sheila Amos; and honorary secretary, Mr. Brian J. Cordery.

The Society announce the following activities for February, 1958:—

4th February: *Any Questions and Debate*.—At The Law Society's Hall at 6.30 p.m.

11th February: *Great Ormond Street Hospital—Scottish Reels*.—At the Nurses' Home, 37 Guilford Street, W.C.1, 9 p.m. to 11 p.m.

18th February: *Concert Party*.—Brian Burrett is arranging a party to go to the Royal Choral Society performance of "The Dream of Gerontius" at the Albert Hall. Tickets are 4s. each. Anyone interested is invited to telephone HOLborn 0874.

25th February: *Comedy on Record*.—At The Law Society's Hall, at 7 p.m.

4th March: *New Members' Evening*.—At The Law Society's Hall, Chancery Lane, W.C.2, at 6.30 p.m.

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